

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 100**

TBMP SECTION

NATURE OF CHANGE

101 Applicable Authority	Section Heading only.
101.01 Statute and Rules of Practice	Amended first paragraph to indicate that proceedings are governed by rules relating to conduct of practitioners and that such rules may be found in Parts 10 and 11 of 37 CFR.
	Amended paragraph 2 to update websites for accessing 37 CFR online. Amended paragraph 3 to update website for accessing information regarding rule changes.
101.02 Federal Rules	Added reference to 37 CFR § 2.122(a); amended first paragraph to include reference to 37 CFR § 2.116(a).
	Added new cases to Note 1: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1117 (TTAB 2009); <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1956 (TTAB 2008); <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i> , 89 USPQ2d 1844, 1861 (TTAB 2008); <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100, 1104-05 (TTAB 2007); <i>Genesco Inc. v. Martz</i> , 66 USPQ2d 1260, 1264-65 (TTAB 2003); <i>Hard Rock Cafe Licensing Corp. v. Elsea</i> , 48 USPQ2d 1400, 1405 (TTAB 1998); <i>Raccioppi v. Apogee Inc.</i> , 47 USPQ2d 1368, 1370, 1372 (TTAB 1998); <i>HRL Assoc. Inc. v. Weiss Assoc. Inc.</i> , 12 USPQ2d 1819, 1822 (TTAB 1989); and <i>Miles Labs. Inc. v. Naturally Vitamin Supplements Inc.</i> , 1 USPQ2d 1445, 1448, n.20 (TTAB 1986).
	Deleted the following from Note 1: references to 37 CFR §§ 2.116(a) and 2.120(a); and citations to <i>Young v. AGB Corp.</i> , 152 F.3d 1377, 47 USPQ2d 1752, 1753 n.3 (Fed. Cir. 1998); and <i>Cerveceria India Inc. v. Cerveceria Centroamericana, S.A.</i> , 10 USPQ2d 1064 (TTAB 1989), <i>aff'd</i> .
	Added signal "e.g." to preface cases cited in Note 2 and added parenthetical to <i>In re Foundry Products, Inc.</i> , 193 USPQ 565 (TTAB 1976) in Note 2.

101.03 Decisional Law	Amended paragraph 2 to inform reader that Board decisions are also available online and provided website addresses.
	Amended paragraph 3 to revise policy on citation of non-precedential decisions; and to inform reader that Board decisions should be cited by reference to the USPQ volumes if available; otherwise to a USPTO publically available electronic database.
	Deleted the following from paragraph 3: “A nonprecedential or digest decision will, however, be considered in determining issues of claim preclusion, issue preclusion, judicial estoppel, law of the case, or the like, provided that (1) a party to the pending Board proceeding, or its privy, was also a party to the prior proceeding, and (2) a complete copy of the decision is submitted.”
	Added new paragraph 4 indicating that parallel citations to Federal Reporter or Federal Supplement should be given.
	New reference added to Note 1: <i>Citation of Opinions to the Trademark Trial and Appeal Board</i> , O.G. Notice (Jan. 23, 2007); new website addresses added to Note 1: http://des.uspto.gov/Foia/TTABReadingRoom.jsp and files of TTAB proceedings are available at http://ttabvue.uspto.gov/ .
	Deleted the following from Note 1: “ <i>In re Polo International, Inc.</i> , 51 USPQ2d 1061, 1063 n.3 (TTAB 1999) (non-precedential case disregarded); <i>In re Caterpillar Inc.</i> , 43 USPQ2d 1335, 1336 (TTAB 1997) <i>citing General Mills Inc. v. Health Valley Foods</i> , 24 USPQ2d 1270, 1275 n.9 (TTAB 1992); and <i>In re American Olean Tile Co.</i> , <i>supra</i> at 1825 n.3 (published digests do not indicate the facts on which the determinations were based). <i>See also Marcon, Ltd. v. Merle Norman Cosmetics, Inc.</i> , 221 USPQ 644, 645 n.4 (TTAB 1984) and <i>Roberts Proprietaries, Inc. v. Rumby International, Inc.</i> , 212 USPQ 302, 303 (TTAB 1981).”
	Deleted former Note 6, citing: <i>General Mills Inc. v. Health Valley Foods</i> , <i>supra</i> .
101.04 Director’s Orders and Notices	Updated website address at which to find Director’s orders and notices.

101.05 Trademark Trial And Appeal Board Manual Of Procedure (new subsection)	This is a new subsection on the purpose and authority of the TBMP.
	Added new Note 1, citing: <i>Rosenruist-Gestao E Servicos LDA v. Virgin Enters. Ltd.</i> , 511 F.3d 437, 85 USPQ2d 1385, 1393 (4th Cir. 2007); and, by comparison, <i>cf. In re Sones</i> , 590 F.3d 1282, 93 USPQ2d 1118, 1123 (Fed. Cir. 2009).
	Added new Note 2, providing reader with mailing address for sending suggestions and comments to the Board.
102 Nature of Board Proceedings	Section Heading only.
102.01 Jurisdiction of Board	Amended first paragraph to delete reference to Board's placement as tribunal within the Office of General Counsel.
	Added new cases to Note 2: <i>FirstHealth of the Carolinas Inc. v. CareFirst of Md. Inc.</i> , 479 F.3d 825, 81 USPQ2d 1919, 1921 (Fed. Cir. 2007) (quoting TBMP); <i>McDermott v. San Francisco Women's Motorcycle Contingent</i> , 81 USPQ2d 1212, 1216 (TTAB 2006) <i>aff'd, unpubl'd</i> , 240 Fed. Appx. 865 (Fed. Cir. 2007), <i>cert. den'd</i> , 128 S.Ct. 893, 169 L.Ed.2d 746 (2008); and <i>Mario Diaz v. Servicios De Franquicia Pardo's S.A.C.</i> , 83 USPQ2d 1320, 1326 (TTAB 2007).
	Added pin cite to <i>Carano v. Vina Concha Y Toro S.A.</i> , 67 USPQ2d 1149, 1151-52 (TTAB 2003) in Note 2.
	Added new cases to Note 3: <i>Hawaiian Host, Inc. v. Rowntree MacKintosh PLC</i> , 225 USPQ 628, 630 (TTAB 1985) (no authority to declare Trademark Act § 44(e) unconstitutional); <i>Electric Storage Battery Co. v. Mine Safety Appliances Co.</i> , 143 USPQ 163, 167 (TTAB 1964). Changed signal from "see also, for example," to "cf." as preface to <i>Capital Speakers Inc. v. Capital Speakers Club of Washington, D.C. Inc.</i> , 41 USPQ2d 1030, 1034 n.3 (TTAB 1996).
102.02 Types of Board Proceedings	Amended first paragraph to indicate that an opposition seeks to prevent issuance of a registration in whole or in part.
	Amended second paragraph to indicate that a cancellation seeks to cancel a registration in whole or in part, of a Principal or Supplemental

	Register registration.
	Amended paragraph 4 to clarify that concurrent use registrations are only available on the Principal Register.
	Deleted the following from former Note 18: “ <i>See also, e.g., In re Sunmarks, Inc.</i> , 32 USPQ2d 1470, 1472 (TTAB 1994) <i>citing In re BankAmerica Corp.</i> , 231 USPQ 873 (TTAB 1986),” because cited cases are not about the Board’s jurisdiction, but rather the Board’s obligation to decide each appeal on its own merits.
102.03 General Description of Board Proceedings	Amended first paragraph to include conferencing, disclosures, trial, and oral hearings as part of Board proceedings; and to inform reader of option to use ACR to expedite proceeding.
	Amended paragraph 2 to include statement discussing makeup of Board; and to indicate that certain motions may be acted upon by Board paralegals or through ESTTA.
	Added parenthetical to <i>La Maur, Inc. v. Bagwells Enter., Inc.</i> , 193 USPQ 234, 235 (Comm’r 1976) in Note 2.
	Added new Note 3, referencing Trademark Act § 17(b).
103 Location and Address of Board	Updated addresses.
104 Business to be Conducted in Writing	Added reference to telephone conferences as exception to rule that all business be conducted in writing.
105 Contact With Board Personnel	Updated telephone number. Deleted invitation to “come to the offices of the Board.” Added prohibition against e-mail inquiries.
106 Identification, Signature, and Form of Submissions	Section Heading only.
106.01 Identification of Submissions	Amended first paragraph to add reference to extension of time to oppose; amended second paragraph to emphasize that documents filed in an application which is the subject of a Board proceeding should not be filed with the Trademark Examining Operation.
106.02 Signature of Submissions	Replaced 37 CFR § 10.14(e) with 37 CFR § 11.14(e) and replaced 37 CFR § 10.18(a) with 37 CFR § 11.18. Updated reference to 37 CFR §

	2.198.
	Amended first paragraph to inform reader that signatory to document filed in Board proceeding must be identified.
	Amended second paragraph to indication that documents filed through ESTTA may bear a signature on only the cover sheet but that the signature must be that of the party filing the document, or its attorney or authorized representative.
	Amended paragraph 3 by deleting “documents filed by the corporation” from statement clarifying that corporate party acting in its own behalf should have an officer sign documents.
	Amended paragraph 4 to indicate that documents must be personally signed or signature inserted by the attorney or representative, unless party must personally sign document; updated 37 CFR § 11.18(b) from 37 CFR § 10.18(b); updated paragraph to clarify that cover letter does not need to be signed by attorney.
	Updated reference to 37 CFR § 2.198 in paragraph 7, changing it from 37 CFR § 2.198(c) to 37 CFR § (b); further updated paragraph to amend “paper copy” to “copy.”
	Updated reference to 37 CFR §§ 2.193 and 11.18(a) by changing “37 CFR § 2.193(c)” to “37 CFR § 2.198(d)-(e) and changing “37 CFR § 10.18(a)” to “37 CFR § 11.18(a).”
	Added new cases to Note 2: <i>DaimlerChrysler Corp. v. Maydak</i> , 86 USPQ2d 1945, 1946 (TTAB 2008); and <i>PPG Indus. Inc. v. Guardian Indus. Corp.</i> , 73 USPQ2d 1926, 1927 (TTAB 2005).
	Added new cases to Note 3: <i>DaimlerChrysler Corp. v. Maydak</i> , 86 USPQ2d 1945, 1946 (TTAB 2008); and <i>PPG Indus. Inc. v. Guardian Indus. Corp.</i> , 73 USPQ2d 1926, 1928 (TTAB 2005).
	Updated references in Note 4 to 37 CFR § 11.14 and 2.11 by changing “37 CFR § 10.14” to “37 CFR § 11.14” and by deleting the “cf.” signal prefacing 37 CFR § 2.11.
	Updated reference in Note 5 from “37 CFR § 10.14(e)” to “37 CFR § 11.14(e).”
	Updated reference in Note 6 from “37 CFR § 10.18 to “37 CFR § 11.18.” Updated signal

	prefacing <i>Clorox Co. v. Chemical Bank</i> , 40 USPQ2d 1098, 1100 n.9 (TTAB 1996) from “see also, for example” to “see also.”
	Added new Note 7, referencing 37 CFR § 2.193(e)(10).
	In Note 8: Updated reference from “37 CFR § 10.18(a)” to “37 CFR § 11.18(a)”; amended parenthetical to <i>Boyds Collection Ltd. v. Herrington & Co.</i> , 65 USPQ2d 2017 (TTAB 2003) by deleting “to suspend” after “motion”; added “cf.” signal prefacing citation to <i>Cerveceria India Inc. v. Cerveceria Centroamericana, S.A.</i> , 10 USPQ2d 1064, 1067 (TTAB 1989); and deleted “ <i>In re Cowan</i> , 18 USPQ2d 1407, 1409 (Comm'r 1990) (Section 8 declaration in name of sole proprietor, but signed for him by his attorney, not acceptable).”
	Added new Note 9, referencing 37 CFR § 2.193(d).
	Updated reference in Note 10 from “37 CFR § 2.193(c)(1)(ii)” to “37 CFR § 2.198(b).”
106.03 Form of Submissions	Updated reference to 37 CFR § 2.126 to reflect rules changes; eliminated discussion of CD-ROM filings in first paragraph and added that CD-ROM filing rules have been revoked.
	Amended paragraph 3 to add that disassembling stapled or bound papers can result in jammed scanning equipment or lost pages.
	Changed the word “paper” to “document” in paragraph 4.
	Deleted the following from paragraph 5: “CD-ROM submissions are governed by part (b) of 37 CFR § 2.126” and “The Board’s electronic filing system is also available to the public in the Trademark Library Search Room.”
	Added new paragraphs 6-9 to include further discussion of (and encouragement to use) ESTTA and to provide toll free telephone number and other contact information for technical ESTTA questions.
	Deleted reference to “CD-ROM” filings in paragraph 10.
	Amended paragraph 11 to advise reader that audio and video tape exhibits may not filed electronically; deleting the following from the paragraph “[may] be transferred to an appropriate

	electronic format for submission to the Board.”
	Amended paragraph 12 to indicate that 37 CFR § 2.126(d) has been changed to 37 CFR § 2.126(c); and added recommendation that confidential materials be filed through ESTTA; deleting the following from the paragraph “Confidential materials filed in the absence of a protective order are not regarded as confidential and will not be kept confidential by the Board.”
	Deleted the following from subheading “Format of submissions” in the final paragraph of this subsection: “As an aid to litigants, however, suggested formats for certain types of documents filed in Board proceedings can be found in the Appendix of Forms to this manual as well as in the section where the particular type of document is discussed. These include a notice of appeal to the Board, designation of domestic representative, certificate of mailing or certificate of transmission under 37 CFR § 2.197, and a certificate of service.”
	Deleted former footnotes 41, 45, 46, referencing 37 CFR § 2.126(c); TBMP 120.02 and 37 CFR § 2.126, respectively, as unnecessary.
107 How and Where to File Papers and Fees	Amended reference to 37 CFR §§ 2.195(b), (d) and (e) to reflect rules changes.
	Amended first paragraph to encourage use of ESTTA and to delete the following: “An increasing number of documents can be filed with the Office through its web site at www.uspto.gov .”
	Updated addresses for delivery of documents relating to Board proceedings, and included Trademark Assistance Center as alternate address for same; also eliminated distinction between documents filed with a fee and those not accompanied by a fee.
	Deleted extensive discussion of fax filing as unnecessary.
	Deleted former notes 48 and 49, referencing 37 CFR § 2.193(c) and TMEP § 306.02, respectively.
	Added final note that Board does not accept any filings by e-mail.

	Amended Note 1 by changing reference to 37 CFR § 2.195 from 2.195(c)(3) to 2.195(d)(3); Added new case to Note 1: <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008); added information on filing notice of ex parte appeal to Note 1.
	Amended Note 2 by eliminating reference to 37 CFR § 2.193(c) and by adding that Board may specifically direct party to make a fax filing.
108 Filing Receipts	Amended first paragraph to eliminate distinction between filing a document with or without a fee.
	Added new second paragraph to explain successful filing of ESTTA documents.
	Amended fourth paragraph to update hand delivery information to Trademark Assistance Center from former “Customers’ Window” and deleted fax information as unnecessary.
	Amended Note 1 to include USPTO web site address and deleted former footnote 51, which had cited 37 CFR § 2.195(c)(3) and TBMP § 107.
109 Filing Date	Updated 37 CFR §§ 2.195 (b), (d) and (e) to reflect rules changes; amended first paragraph to indicate that cover sheet transmitted through ESTTA will be affixed with the date (“and time” deleted) of receipt.
	Deleted the following: “The “date of receipt” of correspondence mailed to the Office is the date stamped by the Post Office on the mailbags in which the correspondence is delivered to the Office.”
	Added new case to Note 1: <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280, 1282 (TTAB 2008); added reference to USPTO web site address.
	Deleted former footnote 54 as follows: “See 37 CFR § 2.195(b); <i>In re Amethyst Investment Group</i> , 37 USPQ2d 1735 (Comm’r 1995); and <i>In re Klein</i> , 6 USPQ2d 1528, 1536 (Dep’t Comm. 1986), <i>aff’d sub nom. Klein v. Peterson</i> , 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), <i>aff’d</i> , 866 F.2d 912, 9 USPQ2d 1558 (Fed. Cir. 1989).”
	Added new reference to Note 3: 37 CFR § 2.198(d).
	Added new reference to Note 4: 37 CFR § 2.195(d)(3).

	Amended reference in Note 6 from “37 CFR §§ 1.6(d) and 1.8(a)” to “37 CFR § 2.195(a) and 2.197(a)” and from “37 CFR § 1.6(e)” to “37 CFR § 2.195(e).”
110 Certificate Of Mailing Procedure and Electronic Filing Using ESTTA (new title)	Changed title from “Certificate of Mailing or Transmission Procedure”
110.01 Certificate Of Mailing – In General (new title)	Changed title from “In General”
	Updated reference to 37 CFR § 2.197(a)(2) to reflect rules changes.
	Amended parenthetical to <i>Luemme Inc. v. D.B. Plus Inc.</i> , 53 USPQ2d 1758, 1759 n.1 (TTAB 1999) in Note 2.
	Added pin cite to <i>S. Indus. Inc. v. Lamb-Weston Inc.</i> , 45 USPQ2d 1293, 1295 (TTAB 1997) in Note 3.
	Changed reference to 37 CFR § 2.195(e)(3) from 37 CFR § 2.1954(c) in Note 4; deleted reference to 37 CFR § 2.197(a) from Note 4.
110.02 Requirements for Certificate	Updated reference to 37 CFR § 2.190 to reflect rules changes.
	Changed the address for correspondence to the Board deposited with the U.S. Postal Service in second paragraph.
	Amended paragraph 5 to indicate that requests for copies of trademark documents are no longer handled by the “Certification Division, Office of Public Records;” provided new contact information.
	Amended paragraph 6 to indicate that the Assignment Services Division is no longer of the “Office of Public Records,” but rather the “Public Records Division;” provides updated address for accessing Trademark Assignment Recordation Coversheet and information regarding same.
	Added new Notes 2 and 4, citing 37 CFR § 2.190(c).
110.03 Suggested Format	Updated address to use for certificate of mailing.
110.04 Location of Certificate	Deleted references to “rubber stamp” application of certificate of mailing.
110.05 Loss Of Certificate Of Mailing	No substantive changes.

110.06 No receipt of Correspondence Bearing Certificate	Updated reference to 37 CFR § 11.1 from “37 CFR § 10.1(r)” to reflect rules changes.
	Added new reference to Note 2: 37 CFR § 2.195(d)(3).
110.07 Excluded Filings	Amended first paragraph to indicate that certificate of mailing procedure is not applicable to extension of time to oppose filing or filing of notice of opposition against application under Trademark Act § 66(a).
	Amended second paragraph to explain that certificate of mailing is not applicable to ESTTA filing.
	Added new Note 1, referencing 37 CFR §§ 2.102(a)(2), 2.101(b)(2), 2.197(a)(2)(i) and (ii) and TMEP § 305.02(a).
110.08 A Certificate of Mailing or Transmission is Not ...	Deleted list of methods by which service may be made, as it is no longer complete (deleting “by hand delivery, first class mail, “Express Mail,” or overnight courier”).
110.09 Electronic Filing Using ESTTA (new subsection)	This is a new subsection, referencing 37 CFR §§ 2.2(g), 2.126(b) and 2.101(b)(2) and 2.121(a)(2), and providing general introduction to ESTTA’s benefits and availability and some basic facts about its use.
	Added new Note 1, referencing 37 CFR § 2.195(a)(2) and USPTO web site address for instructions on filing through ESTTA.
	Added new Note 2, referencing 37 CFR § 2.197 and 2.198 and noting that filers outside of the U.S. cannot utilize either provision.
	Added new Note 3 to inform readers that ESTTA provides contextually appropriate help online.
110.09(a) Plan Ahead (new subsection)	This is a new section to advise reader that ESTTA users should allow sufficient time to deal with filing difficulties or file in paper.
	Added new Note 1, citing <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008).
	Added new Note 2 to alert reader that extension of time to oppose or notice of opposition against an application filed under Trademark Act § 66(a) must be filed through ESTTA.
110.09(b) ESTTA is Mandatory for Some Filings (new subsection)	This is a new subsection to explain that ESTTA is mandatory for extensions of time to oppose and notices of opposition against Trademark Act §

	66(a) applications.
	Added new Note 1, referencing 37 CFR § 2.102(a)(2) and 37 CFR § 2.101(b)(2); and citing <i>O.C. Seacrets Inc. v. Hotelplan Italia S.p.A.</i> , 95 USPQ2d 1327, 1328 n.2 (TTAB 2010).
	Added new Notes 2 and 3, citing <i>In re Börlind Gesellschaft für kosmetische Erzeugnisse mbH</i> , 73 USPQ2d 2019, 2020-21 (TTAB 2005).
110.09(c) Attachments to ESTTA Filings (new subsection)	Subsection Heading only.
110.09(c)(1) In General (new subsection)	This is a new subsection providing general instructions for attaching electronic files to ESTTA forms.
110.09(c)(2) Form of ESTTA Attachments (new subsection)	This is a new subsection describing file formats permitted for ESTTA filing attachments and to warn reader that filer is responsible for ensuring that submissions are legible.
	Added new Note 1 to define meaning of file extensions PDF, TIFF, and TXT.
	Added new Note 2 to encourage ESTTA filings as quality may be better than paper filings.
	Added new Note 3, referencing 37 CFR § 2.126(b).
110.09(c)(3) Size Limitations (new subsection)	This is a new subsection describing limitations on file size and adding new Note 1 to discourage parties from filing overly large records.
110.09(d) Service of ESTTA Filings (new subsection)	This is a new subsection describing service of papers filed via ESTTA.
	Added new Note 1, referencing 37 CFR § 2.119(a).
	Added new Note 2, citing <i>Springfield Inc. v. XD</i> , 86 USPQ2d 1063, 1064 (TTAB 2008) and referencing 37 CFR § 2.119(b).
	Added new Note 3, citing <i>Equine Touch Foundation Inc. v. Equinology Inc.</i> , 91 USPQ2d 1943, 1944 n.5 (TTAB 2009); <i>Schott AG v. Scott</i> , 88 USPQ2d 1862, 1863 n.3 (TTAB 2008); and, by example, <i>Chocoladefabriken Lindt & Sprungli AG v. Flores</i> , 91 USPQ 2d 1698, 1699 n.2 (TTAB 2009).
110.09(e) Questions About ESTTA filing (new subsection)	This is a new subsection describing resources for questions and solving ESTTA-related problems.

111 "Express Mail" Procedure	Section Heading only.
111.01 In General	Added parenthetical to <i>In re Pacesetter Group, Inc.</i> , 45 USPQ2d 1703, 1704 (Comm'r 1994) in Note 2.
111.02 Requirements for "Express Mail"	No substantive changes
111.03 Questionable Date of Mailing	No substantive changes
112 Times for Taking Action	Amended paragraph 3 to indicate that Office hours are Eastern time (from "Standard time") and added statement that ESTTA generally remains available despite official closure of the Office.
	Added new cases to Note 1: <i>Nat'l Football League v. DNH Mgmt. LLC</i> , 85 USPQ2d 1852, 1854 n.6 (TTAB 2008); <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1653 n.8 (TTAB 2007).
	Amended Note 2 to add reference to web site for locating Office Gazette notice.
	Amended Note 3 to update reference to online Office Gazette notice regarding USPTO closure related to September 11, 2001.
113 Service of Papers	Updated reference to 37 CFR § 2.119 to reflect rules changes.
113.01 Requirement for Service of Papers	Updated text pursuant to rule change to delete the following: "The only exceptions to this rule are the notice of opposition and petition for cancellation, which are sent by the Board to the defendant or defendants."
113.02 Requirement for Proof of Service	Amended text to add that Board may provide an electronic link to TTABVUE database to expedite matters where service not effected by party.
113.03 Elements of Certificate of Service	Added signature line to suggested format for certificate of service.
113.04 Manner of Service	Amended first paragraph to indicate that service by electronic transmission is acceptable when mutually agreed upon by the parties and deleted discussion regarding facsimile transmission as a courtesy.
	Added new Note 1, referencing 37 CFR § 2.119(b).
	Added new Note 2, referencing 37 CFR § 2.119(b)(6).
113.05 Additional Time for Taking Action After Service	Amended first paragraph to indicate that 37 CFR § 2.119(c) (providing for 5-day enlargement) does

by Mail	not apply to service by electronic transmission, and that Fed. R. Civ. P. 6(d) (3-day enlargement) does not apply to Board proceedings.
	Amended second paragraph to instruct reader to add additional 5 days to response period before applying 37 CFR § 2.196 (last day for action falling on Saturday, Sunday or holiday).
	Amended third paragraph to add that 5-day enlargement is not available to deadline for filing parties' trial briefs.
113.06 A Certificate of Service Is Not...	No substantive changes.
114 Representation of a Party	Updated 37 CFR § 11.14 (from 37 CFR § 10.14) to reflect rules changes.
114.01 Party May Represent Itself	Updated Notes 1 and 2 to change to "37 CFR § 11.14(e)" from "37 CFR § 10.14(e)."
114.02 Selection of Attorney	No substantive changes.
114.03 Representation by Attorney	Amended first paragraph to update the definition of "attorney" as set forth in 37 CFR § 11.1 (formerly 37 CFR § 10.1(c)).
	Updated reference to 37 CFR § 11.1 from 37 CFR § 10.1(c) throughout subsection, including in Note 1. Further updated Note 1 to change reference to "37 CFR § 11.14(a)" from "37 CFR § 10.14(a)."
	Added parenthetical to <i>Weiffenbach v. Klempay</i> , 29 USPQ2d 2027, 2030 (Dep't Comm. 1993) in Note 1 and updated pin cite to the case from 2031 to 2030.
114.04 Representation by Non-lawyer (i.e., "Other Authorized Representative")	Amended Note 1 by changing reference to "37 CFR § 11.14(b)" from "37 CFR § 10.14(b)" and by amending parenthetical to <i>Weiffenbach v. Frank</i> , 18 USPQ2d 1397, 1400 (consent order) (Comm'r 1991).
114.05 Representation by Foreign Attorney or Agent	Updated reference to 37 CFR § 11.14(c) (formerly 37 CFR § 10.14(c)) and added reference to 37 CFR § 11.14(f).
	Amended first paragraph to inform reader that individual seeking recognition under 37 CFR § 11.14(c) must apply to Director of the Office of Enrollment and Discipline and to provide telephone number and mailing address for further information.
	Amended second paragraph to inform reader that only Canadian attorneys qualify under 37 CFR §

	11.14(c).
	Added new Note 1, referencing 37 CFR § 11.14(f).
	Added new Note 2, referencing TMEP § 602.06.
114.06 Individual Not Entitled to Represent Others	Updated reference to “37 CFR § 11.14(a)” from “37 CFR § 10.14(a)” throughout subsection, changed “party” to “client” in second paragraph to clarify that prohibition does not prevent officer from representing corporation in Board proceeding.
114.07 Designation of Domestic Representative	Updated references to 37 CFR §§ 2.24 and 2.119(d) to reflect rules changes and changed reference to “37 CFR § 11.14(c)” from “37 CFR § 10.14(c)” in first paragraph.
114.08 Adverse Parties Represented by Same Practitioner	Added new cases to Note 1: <i>Sunkist Growers, Inc. v. Benjamin Ansehl Co.</i> , 221 USPQ 1077, 1082 (Comm'r 1984) and <i>Plus Products v. Con-Stan Indus., Inc.</i> , 221 USPQ 1071, 1075 (Comm'r 1984); deleted the following from Note 1: “ <i>Sunkist Growers, Inc. v. Benjamin Ansehl Company</i> , 221 USPQ 1077, 1082 (Comm'r 1984) (attorney was disqualified, but law firm was not); <i>Plus Products v. Con-Stan Industries, Inc.</i> , 221 USPQ 1071, 1075 (Comm'r 1984) (attorney representing respondent in an opposition disqualified in view of his previous representation of petitioner in USPTO proceedings and in infringement litigation concerning the same trademark issues); and <i>Halcon International, Inc. v. Werbow</i> , 228 USPQ 611, 613 (Comm'r 1980) (attorney representing one party in a patent interference proceeding disqualified in view of his previous representation of the adverse party in connection with a process similar to the process involved in the interference).”
	Amended parenthetical to <i>Gilman Corp. v. Gilman Brothers Co.</i> , 20 USPQ2d 1238, 1240 (Comm'r 1991) in Note 1.
115 Conduct of Practitioner	Section Heading only.
115.01 Applicable Rules	Amended first paragraph to delete reference to specific rules in Part 10 and to add reference to Part 11 of 37 CFR.
	Added new second paragraph describing contents of Part 11 of 37 CFR.

	Added new third paragraph to direct all parties in matters before the Board to conduct business with decorum and courtesy.
	Added new Note 2, referencing 37 CFR § 2.192 and <i>MySpace Inc. v. Mitchell</i> , 91 USPQ2d 1060, 1062 n.4 (TTAB 2009).
115.02 Disciplinary Proceedings	Updated 37 CFR §§ 2.193 and 11.18 (formerly 37 CFR § 10.18), and added 37 CFR § 11.20, to reflect rules changes.
	Amended first paragraph to delete reference to 37 CFR § 2.193(c)(2); amended second paragraph to change reference to “37 CFR §§ 11.19-11.61” from “37 CFR §§ 10.130-10.170” and to change reference to “37 CFR § 11.19” from “37 CFR §§ 10.131-10.132.”
	Added new cases to Note 1: <i>Bender v. Dudas</i> , 490 F.3d 1361, 83 USPQ2d 1065 (Fed. Cir. 2007); <i>Sheinbein v. Dudas</i> , 465 F.3d 493, 80 USPQ2d 1537 (Fed. Cir. 2006); <i>Moatz v. Colitz</i> , 68 USPQ2d 1079 (Dir. USPTO 2003); <i>In re Rivera</i> , 67 USPQ2d 1952 (Dir. USPTO 2003); <i>In re Ryznic</i> , 67 USPQ2d 1115 (Dir. USPTO 2003); <i>In re Cohen</i> , 66 USPQ2d 1782 (Dir. USPTO 2003); and <i>Moatz v. Kersey</i> , 67 USPQ2d 1291 (Dir. USPTO 2002).
115.03 Petitions to Disqualify	Updated reference to 37 CFR § 11.19(c) (formerly 37 CFR § 10.130(b)). Amended first paragraph to change reference to “37 CFR §§ 11.19-11.60” from “37 CFR §§ 10.130-10.170.”
	Amended second paragraph to add that case will be suspended upon motion to disqualify pending briefing and consideration of the motion.
116 Termination Of Representation	Section Heading only.
116.01 Revocation of Authority	Updated reference to 37 CFR § 2.19.
116.02 Withdrawal As Representative--In General	Updated reference to 37 CFR § 2.19(b).
116.03 When Withdrawal Is Mandatory	No substantive changes.
116.04 When Withdrawal Is Permissive	No substantive changes.
116.05 Request to Withdraw	Amended reference to “trademark examining operation” from “examining operation” in second paragraph.

	Added new cases to Note 1: <i>In re Slack</i> , 54 USPQ2d 1504, 1505 (Comm'r 2000) and <i>SFW Licensing Corp. v. Di Pardo Packing Ltd.</i> , 60 USPQ2d 1372 (TTAB 2001).
117 Correspondence - With Whom Held	Updated references to 37 CFR §§ 2.18, 2.24, and 2.119(d) to reflect rules changes.
117.01 In General	Amended first paragraph to reference 37 CFR § 11.1 (formerly 37 CFR § 10.1(c)).
	Added new paragraphs 2-4 to inform reader about notice of all Board actions by e-mail.
	Added new case to Note 2: <i>Equine Touch Foundation Inc. v. Equinology Inc.</i> , 91 USPQ2d 1943, 1944 n.3 (TTAB 2009).
	Added new Note 3, referencing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42243-44 (Aug. 1, 2007).
117.02 When There is More Than One Attorney or Other Authorized Representative	Added first paragraph to explain that Board will send multiple copies of e-mail correspondence. Amended third paragraph to include TTABVue as additional location where first-named attorney will be listed for correspondence. Changed reference in Note 2 to "See TMEP § 603.02(a)" from "Cf. TMEP § 603."
117.03 Continuation of Correspondence With Representative in Application or Registration When Inter Partes Proceeding Commences	Amended first paragraph to include e-mail address for correspondence authorized by party; changed web site address for finding the form for recording a change of address.
	Changed reference to "37 CFR § 2.105(c)" from "37 CFR § 2.105" in Note 1.
	Changed reference to "37 CFR § 2.2(f)" from "37 CFR § 7.1" in Note 3.
117.04 Continuation of Correspondence With Representative of Potential Opposer After Opposition Is Filed	No substantive changes.
117.05 Correspondence After Revocation Or Withdrawal	No substantive changes.
117.06 Correspondence With Foreign Party	Updated reference to "37 CFR § 11.14(c)" from "37 CFR § 10.14(c)" to reflect rules changes.
117.07 Change of Address	Updated to include change of e-mail address, added new third paragraph to advise reader on

	"best practice" for changing address.
117.08 Individual Not Entitled to Represent Others	Updated reference to "37 CFR § 11.14(a), (b), or (c)" from "37 CFR § 10.14(a), (b), or (c)" to reflect rules changes.
118 Payment of Fees	Section Heading only.
118.01 Lists of Fees and Charges	Added new Note 1, referencing "www.uspto.gov" and added new Note 2, referencing "www.wipo.int."
118.02 Fees Payable in Advance	Updated to include reference to 37 CFR § 2.101 and 37 CFR § 2.111. Added text to reflect new practice requiring full fee upon institution of opposition or cancellation.
	Added new Note 1, referencing 37 CFR §§ 2.101(d)(4) and 2.111(c)(4).
	Added new Note 2, citing <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.2 (TTAB 2009).
	Added new Note 3, referencing 37 CFR § 2.111(c)(3).
118.03 Method of Payment--In General	Updated reference to 37 CFR § 2.207 to reflect rules changes; included new third paragraph to provide information for payment of fees through ESTTA. Deleted the following: "Papers accompanied by fees may be filed by delivery to the finance window at 2900 Crystal Drive, South Tower Building, Third Floor, Arlington, VA."
	Added parenthetical to <i>Dubost v. U.S. Patent and Trademark Office</i> , 777 F.2d 1561, 227 USPQ 977, 980 (Fed. Cir. 1985) in Note 2.
	Deleted former footnote 118, referencing TBMP § 107.
118.04 Method of Payment--Deposit Accounts	Updated text to indicate payment is allowed by check or electronic funds transfer (formerly "credit card") and that deposit account may be used for payment of any necessary fee.
	Added new Note 2, referencing 37 CFR § 2.208(c).
	Deleted former footnote 121, referencing "Notice at 824 TMOG 1200 (February 23, 1966)."
	Added parenthetical to <i>In re Sky is the Ltd.</i> , 42 USPQ2d 1799, 1800 (Comm'r 1996) in Note 4.
119 Papers And Fees Generally Not Returnable	Section Heading only.

119.01 Fee Refunds-- General Rule	No substantive changes.
119.02 Papers and Fees-- Ex Parte Cases	Changed reference to retention of papers in "Board's file" (formerly "application file") to reflect Board's electronic file practice.
119.03 Papers and Fees-- Inter Partes Cases	Amended first paragraph to address parties' choice to have confidential papers returned or destroyed; deleting the following: "ordinarily are returned after the conclusion of a proceeding, including any appeal period, to the party that filed them." Added statement to inform reader that electronic versions of all submissions are retained and that confidential submissions filed in paper form remain sealed following termination of proceedings.
	Amended paragraph 9 to inform reader that when filing a petition through ESTTA, time-barred grounds for cancellation will not be presented as an option.
	Amended final paragraph in this subsection to advise reader that refund will ordinarily be issued where proceeding has been declared a nullity; deleted, after "proceeding will be dismissed as a nullity," the following: "rather than vacated, so as to maintain the integrity of the proceeding numbers."
120 Access to Files	Amended reference to 37 CFR § 2.27(d) to reflect rules changes.
120.01 Non-confidential Files (new title)	Amended title (formerly "Nonconfidential").
	Amended first paragraph to clarify that all pending Board proceeding files and exhibits are available for public inspection except those filed under seal; added that most Board records since 2001 are electronic; and indicated that particulars of applications and registrations involved in Board proceedings may be viewed online.
	Amended second paragraph and added new paragraphs 3-5 to describe current practice for requesting paper files and making copies of same; deleted statements describing old practices.
120.02 Confidential Materials	Amended first paragraph to include materials filed under seal pursuant to Board's standard protective order; amended second paragraph to note that confidential materials must be

	designated as such at time of filing; added new third paragraph to detail method of filing confidential materials electronically.
	Added new fifth paragraph discouraging submission of sensitive personally-identifiable information.
	Amended paragraph 6 to delete references to files of applications and registrations that are the subject matter of pending proceedings.
	Added new Note 1, referencing 37 CFR § 2.120(g).
	Added new Note 3, referencing http://estta.uspto.gov/filing-type.jsp .
	Amended Note 4 by changing to “37 CFR § 2.126(c)” from “37 CFR §§ 2.27(d)-(e), 2.126(d)” and by deleting reference to “Rany L. Simms, <i>TIPS FROM THE TTAB: Stipulated Protective Agreements</i> , 71 Trademark Rep. 653 (1981).”
	Amended Note 5, by referencing 37 CFR § 2.126(c) and by deleting: “ <i>See Harjo v. Pro-Football, Inc.</i> , 50 USPQ2d 1705, 1714 (TTAB 1999) (Board agreed to hold exhibits marked confidential for thirty days pending receipt of motion for protective order but advised that in absence of such motion the exhibits would be placed in the proceeding file), <i>rev'd on other grounds</i> , 284 F. Supp. 2d 96, 68 USPQ2d 1225 (D.D.C. 2003).”
120.03 Files of Terminated Proceedings	Amended second paragraph to explain creation of electronic records began in 2001 and that official records now kept electronically.
	Amended paragraph 3 to indicate that paper files of cancelled and expired registrations, and abandoned applications, are destroyed after three years (formerly “two”).
	Amended paragraphs 4 and 5 to inform reader of procedures for inspecting or copying paper file stored by the Office.
121 Copying of Files	Deleted former first paragraph, describing photocopier maintained by Board for public use, because Board no longer maintains such machine.
	Added new paragraphs 2-5 describing current procedures for copying Board electronic and paper files; and amended paragraphs 6 and 7 to describe procedures for having the Office furnish

	copies of proceeding files.
	Added new Note 1, referencing http://ttabvue.uspto.gov/ .
	Added new Note 2, referencing http://tmportal.uspto.gov/external/portal/tow .
	Added new Note 3, referencing 37 CFR § 2.6(b)(9).
122. Certification	Section Heading only.
122.01 Court Requirements	Revised to reflect current address for obtaining copy of Board proceeding file for use before a court.
122.02 Certified Copies	Revised to reflect current address for obtaining certified copies of Office proceeding files.
123 Status Information for Applications, Registrations and Board Proceedings	Added new first paragraph to introduce resources for obtaining information about status and prosecution history of, and title to, applications and registrations.
	Revised second and last paragraphs to delete information about Trademark Status (telephone) Line as it is no longer maintained.
	Updated paragraphs 2 and 3 to include current telephone numbers and online customer assistance database information. Deleted reference to the Board Information Systems Index (BISX), found in third paragraph, as the online resource is no longer available.
	Deleted former footnote 135, as follows: “ <i>See In re Sovran Financial Corp.</i> , 25 USPQ2d 1537, 1538 (Comm'r 1992).”
124 Action by Assignee	Amended first paragraph to eliminate as unnecessary, the following: “(either itself, or through its attorney or other authorized representative)” when describing how assignee may act.
	Added new references to Note 1: Trademark Act § 72 and 37 CFR §§ 7.22-7.24.
	Added new references to Note 2: TMEP § 503.05 and 37 CFR §§ 7.22-7.24.
	Added new Note 3, referencing TMEP § 1906.01(a)(i).
	Amended Note 4 by adding reference to TMEP § 1906, <i>et seq.</i> and by deleting the following: “ <i>See Section 72 of the Trademark Act §, 15 U.S.C. 1141/</i> ” and also “ <i>Rules of Practice for Trademark-</i>

	Related Filings Under the Madrid Protocol Implementation Act; Final Rule, published in the Federal Register on September 26, 2003 at 68 FR 55748, 55751; Exam Guide No. 2-03, Guide to Implementation of Madrid Protocol in the United States (part V.I) (October 28, 2003); and Exam Guide No. 1-03, Changes Affecting All Applications and Registrations (part V.D) (October 30, 2003)."
	Deleted the following reference from Note 5: "Exam Guide No. 2-03, supra (parts IV.F and VI.A.1) (October 28, 2003)."

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 200**

TBMP SECTION	NATURE OF CHANGE
201 In General	Amended reference to Trademark Act § 13 and to rules to reflect recent changes.
	Amended Note 1 to delete reference to TBMP chapter 300.”
202 Time for Filing Request	Section heading only.
202.01 In General	Amended reference to Trademark Act § 13 and to rules to reflect recent changes.
	In first paragraph, added information to assist reader to calculate thirty-day opposition period.
	Amended paragraph 4 to instruct reader that using ESTTA to file extension request will prevent untimely filing.
	Amended paragraph 5 to delete requirement that consent of applicant to final extension request must be “written.”
	Added new paragraph 6 to inform reader that final extension request will be denied if based on consent and request is for less than 60 days but will be granted if request is based on extraordinary circumstances and is for less than 60 days (in which case extension will be granted for full 60 days regardless of amount of time requested).
	Added visual chart to illustrate sequence of extension requests that are available.
	Added parenthetical to citation of <i>In re Pacesetter Group, Inc.</i> , 45 USPQ2d 1703, 1704 (Comm’r 1994) in Note 3.
	Amended Note 3 to inform readers regarding restrictions on filing extension requests internationally.
	Amended Note 8 (originally footnote 12) to revise reference to Trademark Rule from 37 CFR § 2.102(c)(3) to 37 CFR § 2.102(c).
	Amended Note 9 (originally footnote 13) to include reference to 37 CFR § 2.102(c)(1).
	Added new Note 10, citing: 37 CFR § 2.102(c)(1).
	Added new Note 12, citing: 37 CFR §

	2.102(c)(3).
202.02 Date of Publication of Mark	Added sentence to inform reader that date of publication is first day of the opposition period.
202.03 Premature Request	No substantive changes.
202.04 Late Request	Added pin cite to citation of <i>In re Cooper</i> , 209 USPQ 670, 671 (Comm'r 1980) in Note 1.
203 Form of Request	Section Heading only.
203.01(a) In General (new title)	Created subsections (a) and (b) of Section 203.01
	Amended references to 37 CFR §§ 2.102 and 2.126 to reflect 2007 rules changes, and added reference to 37 CFR § 2.126(b).
	Amended paragraph 3 to delete requirement that applicant's consent to a final extension request must be in writing.
	Added new paragraph 4 to inform reader that final extension request will be denied if based on consent and request is for less than 60 days but will be granted if request is based on extraordinary circumstances and is for less than 60 days (in which case extension will be granted for full 60 days regardless of amount of time requested).
	Added visual chart to illustrate sequence of extension requests that are available.
	Updated reference to 37 CFR § 2.102 to 37 CFR § 2.102(a) in Note 1.
	Added new Note 8, citing: 37 CFR § 2.101(c)(3).
203.01(b) Note on Electronic Filing With ESTTA (new section)	This is a new section to instruct reader on use of ESTTA for filing extensions of time to oppose. Advises that ESTTA is not available for filings in connection with "Madrid Protocol" applications but otherwise encourages use of ESTTA to avoid common pitfalls. Gives website address for forms, instructions and answers to general questions. Gives e-mail address for answers to technical questions.
	Added new Note 1, citing 37 CFR § 2.102(a); and <i>In re Börlind Gesellschaft für kosmetische Erzeugnisse mbH</i> , 73 USPQ2d 2019 (TTAB 2005).
	Added new Note 2, explaining the information that should be included in an e-mail describing a technical ESTTA problem, and contrasting

	questions of a general nature. Further informs reader that papers may not be filed via e-mail.
203.02 Identifying Information	Section heading only.
203.02(a) In General	Added comment that when filing via ESTTA, once correct form is selected, the system will properly identify it as an extension of time request.
	Added reference, by comparison, to 37 CFR § 2.194(b)-(c) in Note 1.
203.02(b) Requirement for Identification of Potential Opposer	Amended first paragraph to advise filers that while it is less likely a potential opposer would identify itself with insufficient particularity when using ESTTA, care must still be taken to identify the filer correctly.
	Added new paragraph 3, “Tip for ESTTA filers” informing ESTTA filers that if there is more than one potential opposer, each should be named in a separate request and not in a single request naming them as joint opposers.
	Deleted from Note 2: “ <i>In re Software Development Systems, Inc.</i> , 17 USPQ2d 1094, 1095 (Comm'r 1989) (inadvertent oversight does not constitute extraordinary circumstance to waive [former] requirement for proof of service.”
	Added new Note 3, citing, by comparison, <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.2 (TTAB 2009).
203.03 Signature	Amended reference to 37 CFR § 2.102(a) to conform to rule changes.
	Amended first paragraph to update reference to 37 CFR §§ 11.1 and 11.14(b) (formerly 37 CFR §§ 10.1(c) and 10.14(b)).
	Amended paragraph 4 to indicate that if time for opposing expires, involved application will be sent to issuance of a registration or notice of allowance, as appropriate.
	In Note 1, removed signal “see” before reference to 37 CFR § 2.102(a); removed signal “see also” from reference to <i>La Maur, Inc. v. Andis Clipper Co.</i> , 181 USPQ 783, 784 (Comm'r 1974); and replaced parenthetical following <i>La Maur, Inc.</i> , formerly reading “(petition filed by applicant denied; extension requests were filed on behalf of potential

	opposer by its attorney as its representative not as another party)” with the following: “(extension requests signed and filed on behalf of potential opposer by its attorney acceptable).”
	In Note 2, changed reference to 37 CFR § 2.193(c)(1)(iii) by deleting “(1)(iii);” changed signal before reference to TMEP from “see <i>also</i> ” to “see” and changed reference from “TMEP § 804.05” to “TMEP §§ 611.01(b) and 611.01(c).”
203.04 Service	Amended text by deleting “with certain exceptions” from statement that every paper filed in Board <i>inter partes</i> proceeding must be served on adverse party; moved references to 37 CFR §§ 2.119(a) and 2.101(a) to new Notes 1 and 2, respectively.
	Clarified that request for extension of time need not be served on applicant.
	Deleted from Note 3: “See 37 CFR § 2.102(c) and, for example, <i>In re Docrite Inc.</i> , 40 USPQ2d 1636, 1638 (Comm’r 1996) (request for extension of time aggregating more than 120 days does not have to include proof of service on applicant or applicant’s attorney when the request includes a statement that applicant has consented to the extension).”
	Added parenthetical to citation of <i>La Maur, Inc. v. Andis Clipper Co.</i> , 181 USPQ 783, 784 (Comm’r 1974) in Note 3 as follows: “(request for extension of time is an ex parte matter; requests need not be served on applicant).”
	Deleted signal “see” from citation to Trademark Act § 13 in Note 4.
203.05 Duplicate Requests	Clarifies that when duplicate <i>paper</i> requests have been filed, Board will disregard second request if first request has been granted.
	Added new Note 1 to explain that requests for extensions of time filed via ESTTA are not examined by Board staff and thus duplicate requests may be granted by ESTTA; counsel should check the application status in TTABVue before filing any paper.
204 Fee	Added signal “see” before reference to 37 CFR § 2.6.
205 Mark On	Deleted signal “see” in Notes 1, 2, and 3 before

Supplemental Register Not Subject To Opposition	the following references: Trademark Act § 24 (Note 1); Trademark Act § 23(b) (Note 2); and Trademark Act § 24 (Note 3).
	Deleted references to Trademark Act §§ 12(a) and 13(a) from Note 1.
206 Who May File An Extension Of Time To Oppose	Amended reference to 37 CFR § 2.102(b) to reflect rules changes.
206.01 General Rule	Edited wording in first paragraph to substitute “would” for “would will” before “be damaged.”
	Added new second paragraph alerting reader that request for extension of time may not be used for purposes of harassment or delay.
	Deleted signal “see” from citation to Trademark Act § 13(a) in Note 1; and deleted general reference: “For further information concerning the filing of an opposition, see TBMP chapter 300” from Note 1.
	In Note 2, deleted signal “see” from citation to Trademark Act § 13(a).
	In Note 4, deleted signal “see” from citation to <i>Cass Logistics Inc. v. McKesson Corp.</i> , 27 USPQ2d 1075, 1077 (TTAB 1993); and edited parenthetical to that citation by changing “another, unrelated party” to “another (unrelated) party.”
206.02 Request For Further Extension Filed By Privy	Added “Tip for ESTTA filers” informing ESTTA filers that if there is more than one potential opposer, each should be named in a separate request and not in a single request naming them as joint opposers.
	Deleted signal “see” from citation to 37 2.102(b) in Note 1; deleted signal “see” from citation to <i>In re Spang Indus., Inc.</i> , 225 USPQ 888 (Comm’r 1985) in Note 3; and deleted signal “cf.” from citation to <i>Rolex Watch U.S.A., Inc. v. Madison Watch Co., Inc.</i> , 211 USPQ 352, 358 (TTAB 1981) in Note 2.
	Added citation, by comparison, to <i>John W. Carson Found. v. Toilets.com Inc.</i> , 94 USPQ2d 1942, 1946-47 (TTAB 2010) in Note 2.
	Added parenthetical to <i>In re Spang Indus., Inc.</i> , 225 USPQ 888 (Comm’r 1985) in Note 3.
	Added new Note 4, citing, by comparison: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.2 (TTAB 2009).

206.03 Misidentification Of Potential Opposer	Added pin cite to citation to <i>Cass Logistics Inc. v. McKesson Corp.</i> , 27 USPQ2d 1075, 1077 (TTAB 1993) in Notes 1 and 2.
	Deleted signal “see” from citation to <i>Custom Computer Services, Inc. v. Paychex Properties, Inc.</i> , 337 F.3d 1334, 67 USPQ2d 1638, 1640 (Fed. Cir. 2003) in Note 2.
	Deleted signal “see also” from citation to TMEP § 1503.04 in Note 2; added reference to TMEP § 803.06 in Note 2; and deleted citation as well as preceding signal “Cf. also” to TMEP § 803.06 in Note 2.
207 Requirements For Showing Of Cause; Extraordinary Circumstances	No changes.
207.01 In General	Amended first paragraph to emphasize that final extension of time may only be filed with the consent of applicant or upon a showing of extraordinary circumstances.
	Inserted new second paragraph before final sentence of original first paragraph and made that final sentence the final sentence of the new second paragraph. Added text to inform reader that final extension may only be granted for 60 days, no less, and that if final extension requests less than 60 days and is filed on basis of applicant’s consent without showing of extraordinary circumstances, request will be denied.
	Added chart to illustrate extension periods which may be granted.
	Added new Note 5, citing: 37 CFR § 2.102(c)(3).
207.02 Extensions Up To 120 Days From The Date Of Publication	Deleted citation to “ <i>Lotus Development Corp. v. Narada Productions, Inc.</i> , 23 USPQ2d 1310, 1312 (Comm’r 1991)” from Notes 1 and 2.
	Added new Note 3, citing: 37 CFR § 2.102(c)(3).
	Amended citation to <i>Lotus Development Corp. v. Narada Productions, Inc.</i> , 23 USPQ2d 1310, 1312 (Comm’r 1991) by noting in the parenthetical that the case issued under previous rule. Also deleted “ <i>Kimberly-Clark Corp. v. Paper Converting Industry, Inc.</i> , 21 USPQ2d 1875, 1877 (Comm’r 1991) (initial

	request for 60 days with showing of good cause in compliance with the rules)” from Note 4.
207.03 Extensions Beyond 120 Days From The Date Of Publication	Added new second paragraph to inform reader that final extension may only be granted for 60 days, no less, and that if final extension requests less than 60 days and is filed on basis of applicant’s consent without showing of extraordinary circumstances, request will be denied.
	Added new paragraph 4 to inform reader of circumstances that are and are not considered to be extraordinary.
	Deleted discussion of rules and practice applying to cases where a first request for extension of time was filed prior to November 2, 2003.
	Added new Note 2, citing: 37 CFR § 2.102(c)(3).
	Deleted from Note 4: “Please Note: Proof of service of the request on applicant is no longer required. See 37 CFR § 2.102(c), as amended. See also <i>In re Docrite Inc.</i> , 40 USPQ2d 1636, 1638 (Comm’r 1996).”
	In Note 6, edited parenthetical to <i>In re Su Wung Chong</i> , 20 USPQ2d 1399, 1400 (Comm’r 1991) by adding new text and deleting: “(since potential opposer failed to submit required showing of extraordinary circumstances with extension request as required by Rule 2.102(c)(3), question on petition was not whether any such extraordinary circumstances existed at time of request but instead whether potential opposer showed extraordinary circumstances existed that prevented compliance with that rule).” Also deleted “ <i>In re Software Development Systems, Inc.</i> , 17 USPQ2d 1094, 1095 (Comm’r 1989) (inadvertent failure to provide proof of service not extraordinary circumstance to waive [former] rule requiring proof of service); and <i>In re Societe Des Produits Nestle S.A.</i> , 17 USPQ2d 1094 (Comm’r 1990) (extraordinary circumstances not shown to waive requirement that showing of extraordinary circumstances be submitted with extension request and

	subsequently obtained consent insufficient). <i>Cf. In re Spang Industries, Inc.</i> , 225 USPQ 888, 888 (Comm'r 1985) (identification of potential opposer omitted)" from Note 6.
	Added new Note 7, citing: <i>In re Societe Des Produits Nestle S.A.</i> , 17 USPQ2d 1093, 1094 (Comm'r 1990); and, by comparison, <i>In re Spang Indus., Inc.</i> 225 USPQ 888 (Comm'r 1985).
208 Essential Element Omitted	Amended second paragraph to further explain that by using ESTTA for filing extension requests, user will be prompted to supply all essential elements.
	Amended Note 1 by deleting " <i>In re Su Wung Chong</i> , supra; (showing of extraordinary circumstances omitted)"; and by inserting a "semi-colon" to replace the word "and" in the parenthetical to <i>In re Societe Des Produits Nestle S.A.</i> ; and by amending the parenthetical to <i>In re Spang Industries, Inc.</i> from "(identification of potential opposer omitted)" to "(potential opposer not identified with reasonable certainty; defect not curable after time for filing extension expired)."
209 Action By Board On Request	Section Heading only
209.01 Suspension Policy	Amended references for TBMP sections for clarity by adding parentheticals to describe section contents.
209.02 Determination Of Extension Expiration Date	Amended first paragraph by changing wording "the further extension" to "any subsequent extension."
	Added first sentence to paragraph 3 to emphasize that extensions of time will only be granted in increments set out in 37 CFR § 2.102(c) and changed wording in paragraph 3 from "If good cause for the time beyond thirty days has not been shown" to "If good cause for a first extension beyond thirty days has not been shown."
	Deleted the following as redundant of paragraph 4: "If a further request seeks an extension of time to oppose beyond 120 days from the date of publication, but specifies a date which is longer or shorter than the prescribed additional sixty day period, the

	extension, if granted, will be set to expire in sixty days.”
	Added new paragraph 4 to inform reader that a request for additional time beyond 120 days from publication that asks for a time period other than 60 days will be denied unless party cited extraordinary circumstances.
	Added new paragraph 5 to inform reader that ESTTA automatically calculates extension dates.
	Added reference to 37 CFR § 2.196 to Note 1; changed parenthetical to <i>Lotus Dev. Corp. v. Narada Prods., Inc.</i> , 23 USPQ2d 1310, 1312 (Comm'r 1991) from “(potential opposer miscalculated first 30-day extension request and threw off all subsequent periods)” to “(30-day extension expired on Saturday; rule allowing filing of opposition or subsequent extension on following Monday does not extend opposition period; subsequent extension period ran from Saturday, not the next Monday).”
	Added new reference to 37 CFR § 2.102(c)(1) in Note 3.
	Changed reference to 37 CFR § 2.102(c) to 37 CFR § 2.102(c)(2) in Note 4.
	Changed parenthetical to <i>Kimberly-Clark Corp. v. Paper Converting Indus., Inc.</i> , 21 USPQ2d 1875, 1877 (Comm'r 1991) from “(initial request extending beyond thirty days with required showing granted)” to “(under former rules – initial request extending beyond thirty days with required showing of good cause granted).”
	Added new Note 9, citing: 37 CFR § 2.102(c)(3).
210 Objections To Request	Deleted reference to “if there is no proof of service by potential opposer” in first paragraph.
	Amended third paragraph to advise reader that applicant rarely learns of extension request before Board action on the request since requests filed electronically will be automatically processed within minutes.
211 Relief From Action Of Board	Section Heading only.
211.01 Request For Reconsideration	Added sentence to paragraph 4 to warn reader that time for filing opposition or further

	extension will not be suspended pending determination of request for reconsideration.
211.02 Relief After Institution Of Opposition	Deleted reference to TBMP § 502 from Note 1; changed parenthetical to <i>Central Mfg. Inc. v. Third Millennium Tech. Inc.</i> , 61 USPQ2d 1210, 1215 (TTAB 2001) from “(motion to dismiss granted where it was found that opposer's allegations of consent and good cause [i.e., that the parties were engaged in settlement discussions] to extend beyond 120 days were untrue)” to “(motion to dismiss granted where it was found that opposer's allegations of consent and good cause for extension request were untrue)”; added parenthetical to <i>Cass Logistics Inc. v. McKesson Corp.</i> , 27 USPQ2d 1075, 1075 n.2 (TTAB 1993).
211.03 Petition To The Director	Added sentence to paragraph 4 to advise reader that Board will not suspend time for filing opposition or extension of time pending decision of petition to Director.
	Deleted reference to Board's transmission of notice of opposition in paragraph 6, i.e., “and a copy of the notice, along with a copy of the motion to suspend, will be sent to the applicant” in light of opposer's obligation to serve copy of notice of opposition on applicant under 2007 rules changes.
	Amended paragraph 7 by deleting, after the wording “and the opposition will be dismissed,” the following: “as a nullity, and the fee will be refunded.”
	Added reference to 37 CFR § 2.146 to Note 1.
	Deleted “see” signal from Notes 2-5 and from Notes 7 and 8.
	Added new Note 6, citing: 37 CFR § 2.146(e)(1).
	Added reference to 37 CFR § 2.146(g) to Note 9.
212 Amendment Of Application During Or After Extension	Section Heading only.
212.01 Jurisdiction To Consider Amendment	Added sentence to first paragraph to clarify that Board has no jurisdiction over application until it becomes involved in opposition proceeding.
	Amended paragraph 2 to indicate that the Trademark Examining Operation must

	determine propriety of an amendment filed during pendency of request for extension of time; changed the wording “examining attorney” to “Trademark Examining Operation (and not the Board.)” Also added final sentence to paragraph 2 advising that post-publication amendments filed prior to commencement of inter partes proceedings are determined by (and should be filed with) the Petitions Office.
	Amended paragraph 4 to clarify that amendments discussed in this section are those filed prior to commencement of an inter partes proceeding. Also amended paragraph 4 to instruct reader to file any amendment, proposed prior to commencement to an inter partes proceeding, to the Petitions Office; to make any inquiry about such amendment to the Petitions Office or through the Trademark Assistance Center or by sending an e-mail to TMPostPubQuery@uspto.gov. Deleted the following from paragraph 4: “sent to the Board’s attention, not to the examining attorney who approved the mark for publication. The Board will note the amendment and transfer the file to the examining attorney. Because the examining attorney eventually will consider the amendment, any phone inquiry for discussion of the content of the amendment should be directed to the examining attorney.”
	Added new paragraph 5, cautioning parties to take care to direct amendments to the Petitions Office and not the Board; that the Board will not suspend the time for filing an opposition or extension pending consideration of an amendment; and that pendency of amendment may constitute good cause but not extraordinary circumstances to justify further extension.
	Added reference to TMEP § 1504 in Note 1; and added parentheses to citations of 37 CFR § 2.84 and 2.133 in Note 1.
	Added new Note 3, citing, generally, TMEP § 1505.
212.02 Conditions For Petitions Office Approval	Amended second paragraph to delete the following: “or an application under Section 44

Of Amendment (new title)	or 66(a) of the Act in which an appropriate allegation of use has been made.”
	In Note 1, added parenthetical to references to TMEP §§ 1504.01 and 1505.
	In Note 2, changed signal for <i>In re MCI Communications Corp.</i> , 21 USPQ2d 1534, 1539 (Comm'r 1991) from “see” to “e.g.”
	In Note 2, changed signal for TMEP § 1505.01 from “see” to “see <i>generally</i> ” and changed description of that citation from “regarding approval of amendments after publication” to “regarding procedures for processing amendments filed after publication.”
212.03 Form Of Amendment	Amended text to notify reader that papers relating to applications that are subject of a request for extension of time should now be submitted to Petitions Office, and not Board. Deleted, from the end of the last sentence in the text, the following: “except that it should be directed to the attention of the Trademark Trial and Appeal Board (i.e., Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514).”
212.04 Action By Board -- Upon Receipt Of Amendment	Deleted entire section, as Board no longer processes amendments to applications that are subject to extension of time requests. Added text to explain that such amendments should be filed with the Petitions Office.
212.05 Action By Board – During Consideration Of Amendment By TMEP (new title)	Amended first paragraph to clarify that the filing of an amendment does not constitute extraordinary circumstances justifying an extension for final 60 days (i.e., from 120 to 180 days from the date of publication).
	Amended second paragraph to inform reader that opposition may be suspended for consideration, by Petitions Office, of amendment, upon filing of a motion therefor; and deleted wording indicating that Board would institute the opposition absent such motion. Deleted: the Board will institute the opposition, and at the same time the Board will normally suspend the opposition pending consideration of the amendment by the examining attorney.”
	Further amended second paragraph by substituting “Petitions Office” for “examining

	attorney” and by deleting: “A copy of the institution order will be sent to both parties, and a copy of the notice of opposition and any motion to suspend will be sent to the applicant.”
	Added new paragraph 3 to instruct reader that when filing notice of opposition through ESTTA, any motion to suspend should not be filed until after receipt of the opposition proceeding number from ESTTA.
212.06 Action By Board – After Consideration Of Amendment By TMEO (new title)	Revised section to reflect current practice by deleting the entire section except for the last paragraph.
	Deleted footnotes from original section, as follows: Note 1: “ <i>See In re MCI Communications Corp.</i> , 21 USPQ2d 1534, 1539 (Comm’r 1991) (entry of voluntary disclaimer).” Note 2: “ <i>See TMEP 707.</i> ”
	Amended the last paragraph in this section to add that where opposition has been suspended prior to Petitions Office’s action on a post-publication amendment, and the amendment is approved, the Board will notify the parties. Deleted option of declaring opposition a nullity and having the fee refunded.
212.07 Amendment During Opposition	No substantive changes.
213 Effect of Restoration of Jurisdiction	Amended paragraph 3 to inform reader that application subject to extension of time remains subject thereto following restoration of jurisdiction to examining attorney. Further amended paragraph 3 to delete reference that Board’s order includes instruction to examining attorney to return file to the Board.
	Amended paragraph 4 to advise reader that Board will not suspend time for filing notice of opposition or further extension during pendency of the restoration of jurisdiction to examining attorney.
	Amended paragraph 5 to indicate that if mark is republished or registration ultimately denied, any remaining time in opposition period and any further extension requests, will be moot.
	Amended paragraph 6 to delete reference to

	copies of Board's action, notice of opposition, and any motion to suspend being mailed to applicant.
	Amended paragraph 7 to indicate that opposition filing fee will not be refunded in case where opposer decides to have its opposition dismissed following notice from Board of republication of application.
	Amended paragraph 8 to indicate that opposition filing fee will not be refunded where registration of mark is ultimately denied following restoration of application to examining attorney.
	Deleted Note 3, which advised that should request for restoration be granted, opposer's time to file notice of opposition continues to run.
214 Effect Of Republication	Amended first paragraph to delete reference to situation where mark was originally published in wrong class, as requiring republication, as this situation no longer requires republication.
	Amended second paragraph to indicate that opposition will be dismissed, and filing fee will not be refunded, in case where mark is republished by order of the examining attorney.
	Amended paragraph 4 to indicate that republication is "sometimes," rather than "often" necessary to give notice to potential opposers; further amended paragraph to indicate that "occasionally," rather than "sometimes," a mark is republished by inadvertence.
	Amended paragraph 5 to indicate that any opposition filed in response to an inadvertent republication will not be considered or (if instituted) will be dismissed.
	Deleted from Note 1: <i>See also, for example, Groening v. Missouri Botanical Garden</i> , 59 USPQ2d 1601, 1603 (Comm'r 1999) (mark originally published in wrong class may be amended by examining attorney to the correct class and republished in the correct class without either applicant's approval or a restoration of jurisdiction).
	Added references to TMEP §§ 1505.03(a) and 1505.03(b) to Note 1.
	In Note 2, added citation to <i>In re Börlind</i>

	<i>Gesellschaft für kosmetische Erzeugnisse mbH</i> , 73 USPQ2d 2019, 2020 (TTAB 2005).
215 Effect Of Letter Of Protest	In the section throughout, changed “Administrator for Trademark Identifications, Classifications and Practice (Administrator)” and “Administrator” to “Deputy Commissioner.”
	In the second paragraph, added that letter of protest will usually be denied as untimely if filed more than thirty days after publication.
	In the third paragraph, clarified that the filing of a letter of protest does not stay the time for filing either a notice of opposition or a request for an extension of time to oppose; that if mark publishes during pendency of the letter of protest, party must file extension of time request if party wishes to preserve its right to oppose; and that party may choose to file notice of opposition regardless of when letter of protest was filed, once mark is published.
	Added sentence to paragraph 4 to inform reader that Board will not suspend time for filing notice of opposition or extension of time request pending consideration of letter of protest.
	Added new paragraph 5 to explain that a potential opposer may not rely upon filing of letter of protest by a third party to establish good cause for extension of time.
	Revised section, as set forth in paragraph 6, to clarify practice with regard to the filing of a letter of protest before or after publication in the Official Gazette.
	In paragraph 7, added to the first sentence that jurisdiction may or may not have been restored to the examining attorney at time when letter of protest granted. Further added that question of registrability is not before the examiner if jurisdiction has not been restored.
	Updated pin cite to <i>In re Urbano</i> , 51 USPQ2d 1776, 1778-79 n.5 (TTAB 1999) in Note 1.
	Added references to TMEP §§ 1715.02 and 1715.03 in Note 2.
	Deleted reference to TMEP § 1715.03, and added reference to TMEP § 1715.03(b), in Note 3.
	Amended reference in Note 4 to TMEP

	§ 1715.03(c) and deleted “see” signal.
	Added reference to TMEP § 1715.03(c) in Note 5.
	Deleted “ <i>cf.</i> ” signal from Note 6.
	Changed signal in Note 7 from “ <i>cf.</i> ” to “ <i>see.</i> ”
216 Inadvertently Issued Registration	Added sentence to paragraph 4 to inform reader that Board will not suspend time for filing opposition or extension of time request pending cancellation of inadvertently-issued registration.
	Deleted entire paragraph 5, as follows: “If, during the running of an extension of time, the Director cancels and restores to application status a registration that issued inadvertently during an extension of time to oppose, the potential opposer and applicant will be informed of the inadvertent issuance of the registration, its cancellation by the Director, and the status of the extension request in an action prepared by a Board administrative staff member.”
	Amended paragraph 7 to indicate that Board no longer institutes notice of opposition filed during pendency of Director’s cancellation of inadvertently-issued registration, but institutes only if and when registration has been cancelled. In accordance, deleted reference to earlier practice. Also, deleted statement that Board will send copy of notice of opposition to applicant with copy of any motion to suspend filed by opposer.
	Amended paragraph 8 to indicate that if Director cancels and restores registration to application status, the Board will institute (rather than “resume”) the opposition; and that if Director declines to cancel the registration, the opposition will not be instituted (rather than “dismissed as a nullity”).
	Deleted signal “see” in Notes 1, 2, and 3.
217 Relinquishment Of Extension	Amended first and second paragraphs to indicate that where Board forwards application, it is for issuance of registration or statement of use, as appropriate.
218 Abandonment Of Application	Amended first paragraph to indicate that instead of returning opposition filed on or after abandonment of application, it will not be

	considered. Further added sentence in first paragraph explaining that opposition instituted prior to Board's knowledge of abandonment will be dismissed as a nullity and fee refunded.
	Added sentence to second paragraph, to clarify that abandonment during extension of time to oppose is without prejudice to applicant.
	Amended paragraph 4 to encourage reader to use TEAS to file express abandonment prior to commencement of opposition and to inform reader that such abandonments should not be filed with the Board.
	Added information regarding transformation of applications that are cancelled under Article 6(4) of the Madrid Protocol to Note 1.
219 Amendment To Allege Use; Statement Of Use	Amended third paragraph to indicate that late-filed amendments to allege use or premature statements of use will not be considered (deleting statement that they will be returned to filer).
	Amended paragraph 5 to delete reference to Board returning application to examining attorney to process amendment to allege use.
	Amended paragraph 6 to indicate that Board does not suspend time for filing notice of opposition or to request extension of time to oppose pending consideration of an amendment to allege use.
	Amended paragraph 7 to indicate that examining attorney should notify Board (rather than return file to Board) following processing of amendment to allege use.
	Deleted signal "see" in Notes 1, 2, 3, 4, and 8; changed signal in Note 5 from " <i>described in</i> " to "see" and changed signal in Note 7 from " <i>as described in</i> " to "see."
220 Inadvertent Issuance Of A Notice Of Allowance	Updated reference to "ITU/Divisional Unit" (formerly the Intent to Use Division) in first paragraph.
	Deleted references in first paragraph to receipt by Board of untimely statement of use inasmuch as Board no longer receives these filings.
	Amended second paragraph to delete reference to Board's receipt of "file for action" and replace with reference to Board's learning

	of issuance of notice of allowance.
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**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 300**

TBMP SECTION	NATURE OF CHANGE
301 Types of Board Proceedings	Section Heading only
301.01 In General	Moved section entitled "Mark on Supplemental Register not Subject to Opposition" to TBMP § 301.01. Deleted "[see] authorities cited therein" from reference to statute in Note 5.
301.01 Mark on Supplemental Register not Subject to Opposition (new section)	This is a new subsection based on prior TBMP § 301 section, including footnotes. Amended to reflect that current Board practice is not to return improperly filed opposition in paper form to parties.
301.02 Mark Filed Under the Madrid Protocol is Subject to Opposition (new section)	This is a new subsection to inform readers that applications filed under Madrid Protocol are subject to opposition.
302 Commencement of Proceeding	Amended references to 37 CFR §§ 2.101(a) and 2.111(a) to reflect rule changes; amended first paragraph to inform reader that plaintiff must include proof of service with its complaint and notify Board of undeliverable service copy; added references in first paragraph to TBMP §§ 309.02(c) and 306.05.
	In Note 1, added parenthetical to <i>Yamaha International Corp. v. Hoshino Gakki Co.</i> , 840 F.2d 1572, 6 USPQ2d 1001, 1004 (Fed. Cir. 1988); and added new case to Note 1: <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008).
	Added new Note 2, referencing 37 CFR § 2.101(a); added new Note 3, referencing 37 CFR § 2.101(b); added new Note 4, referencing 37 CFR § 2.101(b).
303 Who May Oppose or Petition to Cancel	Section Heading only.
303.01 In General	Amended references to Trademark Act §§ 13(a), 14, 24 and 45 and to 37 CFR § 2.101(b) to reflect statutory and rule changes.
303.02 Meaning of the Term "Person"	Clarified when Board may inquire regarding complaints filed in name of division; and added parenthetical to citation of <i>In re Cambridge Digital Systems</i> , 1 USPQ2d 1659,

	1660 n.1 (TTAB 1986) in Note 4.
303.03 Meaning of the Term "Damage"	Amended the section to add to discussion on meaning of term "damage."
	Added new Note 1, citing <i>Ritchie v. Simpson</i> , 170 F.3d 1092, 50 USPQ2d 1023, 1025 n.2 (Fed. Cir. 1999).
	Added new Note 3, citing <i>Ritchie v. Simpson</i> , 170 F.3d 1092, 50 USPQ2d 1023, 1025 n.2 (Fed. Cir. 1999).
	Added new Note 4, citing <i>Ritchie v. Simpson</i> , 170 F.3d 1092, 50 USPQ2d 1023, 1025 n.2 (Fed. Cir. 1999); and <i>Lipton Industries, Inc. v. Ralston Purina Co.</i> , 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).
	Added new case to Note 5: <i>Enbridge, Inc. v. Excelerate Energy Limited Partnership</i> , 92 USPQ2d 1537, n.10 (TTAB 2009).
	Added new Note 6, citing <i>Ritchie v. Simpson</i> , 170 F.3d 1092, 50 USPQ2d 1023, 1025 n.2 (Fed. Cir. 1999).
303.04 Federal Trade Commission	Amended references to Trademark Act § 14 to reflect statutory changes.
303.05 Opposition Filed During Extension of Time to Oppose	Added reference to 37 CFR § 2.102(a).
303.05(a) General Rule	Added parenthetical to citation of <i>In re Cooper</i> , 209 USPQ 670, 671 (Comm'r 1980) in Note 2.
303.05(b) Opposition Filed by Privy	Amended parenthetical to <i>SDT Inc. v. Patterson Dental Co.</i> , 30 USPQ2d 1707, 1709 (TTAB 1994) in Note 1.
	Added parentheticals to cases cited in Note 2: <i>SDT Inc. v. Patterson Dental Co.</i> , 30 USPQ2d 1707, 1709 (TTAB 1994) and <i>In re Cooper</i> , 209 USPQ 670, 671 (Comm'r 1980).
	Added parentheticals to cases cited in Note 3: <i>SDT Inc. v. Patterson Dental Co.</i> , 30 USPQ2d 1707, 1709 (TTAB 1994) and <i>In re Cooper</i> , 209 USPQ 670, 671 (Comm'r 1980).
	Added new case to Note 2: <i>In re Spang Industries</i> , 225 USPQ 888.
	New cases added, by comparison, to Note 3: <i>Leading Jewelers Guild, Inc. v. LJOW Holdings LLC</i> , 82 USPQ2d 1901, 1901 n.1

	(TTAB 2007); <i>Missouri Silver Pages Directory Publishing Corp. Inc. v. Southwestern Bell Media, Inc.</i> , 6 USPQ2d 1028 (TTAB 1988); <i>Raker Paint Factory v. United Lacquer MFG. Corp.</i> , 141 USPQ 407 (TTAB 1964); <i>Pyco, Inc. v. Pico Corp.</i> , 165 USPQ 221, 222 (TTAB 1969); and, by comparison, <i>Chien Ming Huang v. Tzu Wei Chen Food Co.</i> , 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988).
303.05(c) Misidentification of Opposer	Changed "by" to "through" to conform to 37 § CFR 2.102(b) in second and third paragraphs.
	Added new cases to Note 2: <i>Missouri Silver Pages Directory Publishing Corp. Inc. v. Southwestern Bell Media, Inc.</i> , 6 USPQ2d 1028 (TTAB 1988); <i>Chien Ming Huang v. Tzu Wei Chen Food Co.</i> , 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988); <i>Societe Civile Des Domaines Dourthe Freres v. S.A. Consortium Vinicole De Bordeaux Et De La Gironde</i> , 6 USPQ2d 1205 (TTAB 1988) and <i>Argo & Company v. Springer</i> , 189 USPQ 581 (TTAB 1976).
	Deleted from Note 2: " <i>Arbrook, Inc. v. La Citrique Belge, Naamloze Vennootschap</i> , 184 USPQ 505, 506 (TTAB 1974) (motion to substitute granted where opposition was mistakenly filed in name of original owner); <i>Davidson v. Instantype, Inc.</i> , 165 USPQ 269, 271 (TTAB 1970) (leave to amend to substitute proper party granted where opposition was filed in name of the individual rather than in the name of the corporation); <i>Pyco, Inc. v. Pico Corp.</i> , 165 USPQ 221, 222 (TTAB 1969) (where succession occurred prior to filing of opposition, erroneous identification of opposer as a partner in a firm which no longer existed was not fatal); and TBMP § 512.04 (Misidentification)" from Note 2; also deleted <i>U.S. Pioneer Electronics Corp. v. Evans Marketing, Inc.</i> , 183 USPQ 613 (Comm'r 1974) (deletion of "company" was correctable mistake)."
303.05(d) (new) Misidentification of Applicant or Respondent	This is a new subsection discussing misidentification of defendant. Added new Note 1, citing: <i>Argo & Company v. Springer</i> , 189 USPQ 581 (TTAB 1976); <i>In re Tong Yang</i>

	<i>Cement Corp.</i> , 19 USPQ2d 1689 (TTAB 1991); and <i>Societe Civile Des Domaines Dourthe Freres v. S.A. Consortium Vinicole De Bordeaux Et De La Gironde</i> , 6 USPQ2d 1205 (TTAB 1988).
303.06 Joint Opposers or Petitioners	Added new case to Note 3: <i>Sun Valley Company Inc. v. Sun Valley Manufacturing Co.</i> , 167 USPQ 304 (TTAB 1970).
304 Proceeding Against Multiple Class Application or Registration	Added new Note 1, referencing 37 § CFR 2.86; added information explaining allocation of fees where insufficient fees submitted and referencing TBMP § 308.
305 Consolidated and Combined Complaints	Divided TBMP § 305 into TBMP §§ 305.01 and 305.02.
305.01 Consolidated Complaint (new section)	This is a new subsection that discusses consolidated complaints only. Removed text regarding combined complaints and re-entered it into TBMP § 305.02. Moved the following to Note 3 of TBMP § 305.02: “ <i>Nabisco Brands Inc. v. Keebler Co.</i> , 28 USPQ2d 1238 n.2 (defendant who believes marks and issues are sufficiently different such that combined proceeding is not appropriate may file motion to separate proceedings).” Changed signal in Note 3, referencing Fed. R. Civ. P. 42(a) from “ <i>cf.</i> ” to “ <i>See.</i> ”
305.02 Combined Complaint (new section)	This is a new subsection regarding combined complaints. Added text taken from TBMP § 305 regarding combined complaints and inserted it here; added information about ESTTA; rearranged order of citations in Note 3 from most recent to oldest.
306 Time For Filing Opposition	Section Heading only.
306.01 In General	Amended references to Trademark Act §§ 12(a) and 13(a) and to 37 CFR § 2.101 to reflect recent changes; updated subsection to include information on ESTTA filing, new rules on service requirements; and amendments to opposed applications.
	Added new case to Note 2: <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008); added new Trademark Rule to Note 2: 37 CFR § 2.195(d)(3).

	Added new Note 3, citing: <i>In re: Börlind Gesellschaft für Kosmetische Erzeugnisse GmbH</i> , 73 USPQ2d 2019 (TTAB 2005); and 37 CFR § 2.101(b)(2).
	Added new case to Note 4: <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008).
	Added new Note 5, citing: 37 CFR § 2.198(a)(2).
	Added new Note 6, citing: <i>Drive Trademark Holdings LP v. Inofin and Mark Walsh</i> , 83 USPQ2d 1433 (TTAB 2007); and 37 CFR § 2.107.
	Added new Note 7, citing: <i>Yahoo! Inc. v. Loufrani</i> , 70 USPQ2d 1735 (TTAB 2004); <i>Quality S. Manufacturing Inc. v. Tork Lift Central Welding of Kent Inc.</i> , 60 USPQ2d 1703 (Comm'r 2000); and <i>In re Merck & Co. Inc.</i> , 24 USPQ2d 1317 (Comm'r 1992).
	Added new Note 8, citing: <i>Schott AG v. L'Wren Scott</i> , 88 USPQ2d 1862, 1863 n.3 (TTAB 2008); <i>Chocoladefabriken Lindt & Sprungli AG v. Flores</i> , 91 USPQ2d 1698, 1699 n.3 (TTAB 2009), citing <i>Vibe Records, Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280, 1282 (TTAB 2008).
	Added new Note 9, citing: <i>The Equine Touch Foundation, Inc. v. Equinology, Inc.</i> , 91 USPQ2d 1943, 1944 n.5 (TTAB 2009).
306.02 Date Of Publication Of Mark	Added reference to Official Gazette and new Note 1 regarding same.
306.03 Premature Opposition	No substantive changes.
306.04 Late Opposition	Added new paragraph 3 to advise that filing via ESTTA may avoid certain filing errors. Added new case to Note 1: <i>The Equine Touch Foundation, Inc. v. Equinology, Inc.</i> , 91 USPQ2d 1943, 1945 n.6 (TTAB 2009); and explained in Note 1 that 37 CFR § 2.197 has replaced former Patent and Trademark Office Rule 1.8 for trademark correspondence.
	Added new Note 2, citing: <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1436 n.10 (TTAB 2007).

307 Time For Filing Petition To Cancel	Amended references to Trademark Act § 14 and 24 and to 37 CFR § 2.111 to reflect statutory and rule changes.
307.01 Petition That May Be Filed At Any Time After Registration	Added reference to 37 CFR § 2.198 and new Note 9 regarding same.
307.02 Petition That Must Be Filed Within Five Years From The Date Of Registration	Section Heading only.
307.02(a) In General	Deleted reference to "deceptively misdescriptive" as grounds not permitted after five years; added "genericness claim made to only a portion of the mark" as ground not permitted after five years.
	Added reference to 37 CFR § 2.198; indicated when Board may not dismiss timely petition to cancel served on registrant's attorney.
	Added new cases to Note 1: <i>Otto International Inc. v. Otto Kern GmbH</i> , 83 USPQ2d 1861, 1863 (TTAB 2007); and <i>Tri- Star Marketing LLC v. Nino Franco Spumanti S.R.L.</i> , 84 USPQ2d 1912, 1913 (TTAB 2007).
	Added new case to Note 4: <i>Otto International Inc. v. Otto Kern GmbH</i> , 83 USPQ2d 1861, 1863 (TTAB 2007).
	Added new Note 5, citing: <i>The Equine Touch Foundation Inc. v. Equinology, Inc.</i> , 91 USPQ2d 1943 (TTAB 2009); <i>Montecash LLC v. Anzar Enterprises Inc.</i> , 95 USPQ2d 1060, 1063 (TTAB 2010); and <i>Finanz St. Honore B.V. v. Johnson & Johnson</i> , 85 USPQ2d 1478, 1480 (TTAB 2007).
	Added new Note 6, citing: <i>Otto International Inc. v. Otto Kern GmbH</i> , 83 USPQ2d 1861, 1862-63 (TTAB 2007).
	Added new Note 7, citing: <i>Finanz St. Honore B.V.</i> , 85 USPQ2d 1478, 1480 (TTAB 2007).
	Added new Note 11, citing: Trademark Rule 37 CFR § 2.198.
	Added new Note 13, citing: <i>The Equine Touch Foundation Inc. v. Equinology, Inc.</i> , 91 USPQ2d 1943 (TTAB 2009).
307.02(b) Trademark Act § 14, 15 U.S.C. § 1064, Limitation is Independent	No substantive changes made.

of Trademark Act § 15, 15 U.S.C. § 1065, Affidavit (new title)	
307.02(c) Factors Affecting the Five-Year Period	Section Heading only.
307.02(c)(1) Reliance on Registration by Plaintiff	Added parenthetical to citation of <i>UMC Industries, Inc. v. UMC Electronics Co.</i> , 207 USPQ 861, 862 n.3 (TTAB 1980) in Note 1.
307.02(c)(2) Amendment of Registration	No substantive changes made.
307.03 Premature Petition To Cancel	No substantive changes made.
307.04 Late Petition To Cancel	No substantive changes made.
308 Filing Fees	Section Heading only.
308.01 Fee For Filing Opposition	Section Heading only.
308.01(a) In General	Amended references to Trademark Act § 13(a) and 37 CFR § 2.101 to reflect statutory and rule changes; added reference to TBMP § 304 in second paragraph. Added new case to Note 1: <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008); added new Note 2, citing: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.2 (TTAB 2009).
308.01(b) Insufficient Fee	Added to Notes 1 and 2: “Board practice does not permit the filing of a petition for cancellation on CD-ROM. See 37 CFR § 2.126; Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42247 (August 1, 2007).”
	Added new cases to Note 3: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.2 (TTAB 2009); and <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008).
	Added new Note 4, citing: 37 CFR § 2.101(d)(3)(i).
308.02 Fee For Filing Petition To Cancel	Section Heading only.
308.02(a) In General	Amended references to Trademark Act § 14 and 24 and 37 CFR § 2.111(c)(1) to reflect

	statutory and rule changes; added reference to TBMP § 304 in second paragraph; added new case to Note 1: <i>Fred Beverages, Inc. v. Fred's Capital Management Company</i> , 605 F.3d 968, 94 USPQ2d 1958 (Fed. Cir. 2010).
308.02(b) Insufficient Fee	Added to Note 1: 37 CFR § 2.126 and reference to Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42247 (August 1, 2007); added new Note 2, citing, by comparison: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.2 (TTAB 2009); and <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008); added new Note 3, citing: 37 CFR § 2.111(c)(3)(i); added new Note 4, citing, as example: <i>Giersch v. Scripps Networks Inc.</i> , 90 USPQ2d 1020, 1021 n.1 (TTAB 2009). Clarified requirements to correct defective renewal application in Note 5.
308.02(c) Petition Filed by Federal Trade Commission	No substantive changes made.
308.02(d) Fee for Counterclaim	No changes made.
308.03 Fees for Joint Opposers or Petitioners	Added reference to ESTTA filing procedures, including information on ESTTA's calculation of filing fees; added reference to TBMP §§ 308.01(b) and 308.02(b) to text. Added new Note 2, citing: 37 CFR § 2.101(d)(2) and 37 CFR § 2.111(c)(2). Added new Note 3, citing: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.2 (TTAB 2009); <i>Giersch v. Scripps Networks Inc.</i> , 90 USPQ2d 1020, 1021 n.1 (TTAB 2009); and, by comparison, <i>Vibe Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008).
308.04 Fees For Proceeding Against Multiple Class Application Or Registration	Added reference to ESTTA filing procedures; added reference to TBMP §§ 308.01(b) and 308.02(b); added new Note 2, citing: 37 CFR § 2.101(d)(2) and 37 CFR § 2.111(c)(2).
308.05 Fees For Consolidated And Combined Complaints	No substantive changes made.

309 Form And Content Of Oppositions And Petitions To Cancel	Section Heading only.
309.01 In General	Amended references to 37 CFR §§ 2.101(b), 2.111(b), and 2.126 to reflect statutory and rule changes; amended first paragraph to inform reader that Board no longer accepts CD-ROM filings; added new Note 1 regarding same, citing: 37 CFR § 2.126(a) and (b) and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42247 (August 1, 2007); added new Note 3, citing: 37 CFR § 2.111(a) and (b). Deleted the following from Note 3: “See, e.g., 37 CFR § 2.126(b) (‘Submissions may be made to the...Board on CD-ROM where the rules in this part or Board practice permit.’).”
309.02 Form Of Complaint	Added reference to 37 CFR §§ 2.111(a) and 2.111(b) in Note 2.
309.02(a) Format for Complaint	Added information in first paragraph about filing complaints through ESTTA and about using ESTTA for general filing purposes.
	Amended section under heading: “name of proceeding” by deleting “the Board will insert, in the blank space, the number assigned to the proceeding.”
	Amended section under heading: “Registrant information in petition to cancel” by including information on how to determine correspondence address of registration owner.
	Added new Note 1, citing: <i>PPG Industries Inc. v. Guardian Industries Corp.</i> , 73 USPQ2d 1926, 1928 (TTAB 2005) and <i>Schott AG v. Scott</i> , 88 USPQ2d 1862, 1863 n.3 (TTAB 2008).
309.02(b) Signature of Complaint	Amended first paragraph to add information about signature on complaints filed via ESTTA.
	New case added to Note 1: <i>Media Online Inc. v. El Clasificado, Inc.</i> 88 USPQ2d 1285, 1286 n.3 (TTAB 2008).
	Added new Note 3, citing: <i>PPG Industries Inc. v. Guardian Industries Corp.</i> , 73 USPQ2d 1926, 1927 (TTAB 2005) and <i>Schott AG v. Scott</i> , 88 USPQ2d 1862, 1863 n.3 (TTAB

	2008).
	Added new Note 4, citing: <i>PPG Industries Inc., v. Guardian Industries Corp</i> , 73 USPQ2d 1926, 1928 (TTAB 2005).
	Deleted the following from Note 7: “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 329 (1985).”
309.02(c) Service of Complaint	Deleted existing subsection, which read (in its entirety) as follows: “The complaint need not be served by the plaintiff on the defendant. Rather, the complaint, and any exhibits thereto, will be forwarded to the defendant by the Board itself. See 37 CFR §§ 2.105(b) and (c), 2.113(b) and (c), and 2.119(a). See also TBMP § 310 (Notification to Parties of Proceeding).”
309.02(c)(1) Service of Opposition on Applicant (new subsection)	This is a new subsection, referencing 37 CFR § 2.101 and describing service requirements for plaintiffs in opposition proceedings, including how proceeding is commenced; whom to serve; how to determine the service address; the manner of service; use of ESTTA; how to handle undeliverable service copies and determine the filing date of the opposition.
309.02(c)(2) Service of Petition on Respondent (new subsection)	This is a new subsection referencing 37 CFR § 2.111 and describing service requirements for plaintiffs in cancellation proceeding, including how proceeding is commenced; whom to serve; how to determine the service address; the manner of service; use of ESTTA; how to handle undeliverable service copies and determine the filing date of the cancellation.
309.03 Substance Of Complaint	Amended references to Trademark Act § 18 to reflect statutory changes; amended references to 37 CFR §§ 2.99(h), 2.11(b), 2.112(a), and 2.133(c); and added reference to 37 CFR § 2.101(b) to reflect recent changes.
309.03(a) In General	Section Heading only.

309.03(a)(1) Scope of Opposition and Petition to Cancel	Added reference to TBMP Chapter 1100 in first paragraph.
309.03(a)(2) Elements of Complaint – In General	Added information about factual allegations made in pleadings and added new Note 4, citing: <i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 554, 570, 127 S.Ct. 1955 (2007); <i>Ashcroft v. Iqbal</i> , 556 U.S. ___, 129 S.Ct. 1937 (2009).
	Added <i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 554, 570, 127 S.Ct. 1955 (2007); <i>Fair Indigo LLC v. Style Conscience</i> , 85 USPQ2d 1536, 1538 (TTAB 2007) to Note 3; deleted: <i>Harsco Corp. v. Electrical Sciences Inc.</i> , 9 USPQ2d 1570 (TTAB 1988); “Beth A. Chapman, <i>TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302 (1991)” from Note 4.
	Added new Note 4, citing: <i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 554, 570, 127 S.Ct. 1955 (2007); <i>Ashcroft v. Iqbal</i> , 556 U.S. ___, 129 S.Ct. 1937 (2009); Fed. R. Civ. P. 8(a)(2).
	Added <i>O.C. Seacrets Inc. v. Hotelplan Italia S.p.A.</i> , 95 USPQ2d 1327, 1329 (TTAB 2010) to Note 6.
	Amended Fed. R. Civ. P. 8(e)(2) to Fed. R. Civ. P. 8(d)(2) in Note 8 to reflect recent changes.
	Added new Note 9, citing: Fed. R. Civ. P. 8(d)(2).
	Added new Note 11, citing: <i>Brown Shoe Co. v. Robbins</i> , 90 USPQ2d 1752 (TTAB 2009); <i>Baseball America Inc. v. Powerplay Sports, Ltd.</i> , 71 USPQ2d 1844, 1846 n.6 (TTAB 2004); and <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1530 (TTAB 2008).
309.03(b) Standing	Expanded discussion of standing requirement; expanded discussion of examples of claims under likelihood of confusion and disparagement where standing was considered. In second paragraph, deleted “and cases cited therein” following reference to TBMP § 303.03.
	Added new cases to Note 2: <i>Jewelers Vigilance Committee Inc. v. Ullenberg Corp.</i> , 7

	USPQ2d 1628 (Fed. Cir. 1988), <i>Enbridge, Inc. v. Excelerate Energy Limited Partnership</i> , 92 USPQ2d 1537, n.10 (TTAB 2009), <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112 (TTAB 2009); <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1530 (TTAB 2008), <i>Kellogg Co. v. General Mills Inc.</i> , 82 USPQ2d 1766, 1767 (TTAB 2007), and <i>Association pour la Defense et la Promotion de L'Oeuvre de Marc Chagall dite Comite Marc Chagall v. Bondarchuk</i> , 82 USPQ2d 1838, 1841 (TTAB 2007).
	Added new cases to Note 3: <i>Corporacion Habanos S.A. v. Anncas Inc.</i> , 88 USPQ2d 1785 (TTAB 2008).
	Added new cases to Note 5: <i>Sinclair Oil Corp. v. Kendrick</i> , 85 USPQ2d 1032, 1037 (TTAB 2007) and <i>Demon International LC v. Lynch</i> , 86 USPQ2d 1058 (TTAB 2008).
	Added new Note 6, citing: <i>Ritchie v. Simpson</i> , 170 F.3d 1092, 1095-6 (Fed. Cir. 1999); <i>Jansen Enterprises Inc. v. Rind</i> , 85 USPQ2d 1104, 1107 (TTAB 2007); <i>Cunningham v. Laser Golf Corp.</i> , 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); and <i>Lipton Industries, Inc. v. Ralston Purina Co.</i> , 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).
	Added new cases to Note 7: <i>Cunningham v. Laser Golf Corp.</i> , 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); <i>Lipton Industries, Inc. v. Ralston Purina Co.</i> , 213 USPQ 185, 189 (CCPA 1982); <i>Otto Roth & Co. v. Universal Foods Corp.</i> , 640 F.2d 1317, 209 USPQ 40 (CCPA 1981); <i>Bausch & Lomb Incorporated v. Karl Storz GmbH & Co KG</i> , 87 USPQ2d 1526, 1530 (TTAB 2008); <i>L.C. Licensing Inc. v. Berman</i> , 86 USPQ2d 1883, 1887 (TTAB 2008); <i>Herbaceuticals Inc. v. Xel Herbaceuticals Inc.</i> , 86 USPQ2d 1572, 1576 (TTAB 2008), <i>Grand Canyon West Ranch LLC v. Hualapai Tribe</i> , 88 USPQ2d 1501, 1502 (TTAB 2008); <i>Schering-Plough HealthCare Products Inc. v. Ing-Jing Huang</i> , 84 USPQ2d 1323, 1324 (TTAB 2007), <i>Chicago Bears Football Club Inc. v. 12TH</i>

	<p><i>Man/Tennessee LLC</i>, 83 USPQ2d 1073, 1075 (TTAB 2007); <i>Wet Seal Inc. v. FD Management Inc.</i>, 82 USPQ2d 1629, 1634 (TTAB 2007); <i>Barbara's Bakery Inc. v. Landesman</i>, 82 USPQ2d 1283, 1285 (TTAB 2007); <i>L. & J.G. Stickley Inc. v. Cosser</i>, 81 USPQ2d 1956, 1964 (TTAB 2007); and <i>Baseball America Inc. v. Powerplay Sports Ltd.</i>, 71 USPQ2d 1844 (TTAB 2004).</p>
	<p>Added new Note 8, citing: <i>Cunningham v. Laser Golf Corp.</i>, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); <i>Lipton Industries, Inc. v. Ralston Purina Co.</i>, 213 USPQ 185, 189 (CCPA 1982); <i>King Candy Co. v. Eunice King's Kitchen, Inc.</i>, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974); <i>Brown Shoe Co. v. Robbins</i>, 90 USPQ2d 1752 (TTAB 2009); <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i>, 89 USPQ2d 1844, 1849 (TTAB 2008); <i>Corporacion Habanos S.A. v. Anncas Inc.</i>, 88 USPQ2d 1785 (TTAB 2008); <i>Boston Red Sox Baseball Club LP v. Sherman</i>, 88 USPQ2d 1581, 1586 (TTAB 2008); <i>H.D. Lee Co. v. Maidenform Inc.</i>, 87 USPQ2d 1715, 1721 (TTAB 2008); <i>Apple Computer v. TVNET.net Inc.</i>, 90 USPQ2d 1393 (TTAB 2007); <i>Sinclair Oil Corp. v. Kendrick</i>, 85 USPQ2d 1032, 1037 n.10 (TTAB 2007); <i>Black & Decker Corp. v. Emerson Electric Co.</i>, 84 USPQ2d 1482, 1490 (TTAB 2007); <i>Christian Broadcasting Network Inc. v. ABS-CBN International</i>, 84 USPQ2d 1560, 1565 (TTAB 2007); <i>Otto International Inc. v. Otto Kern GmbH</i>, 83 USPQ2d 1861 (TTAB 2007); <i>B.V.D. Licensing Corp. v. Rodriguez</i>, 83 USPQ2d 1500, 1505 (TTAB 2007); <i>Truescents LLC v. Ride Skin Care LLC</i>, 81 USPQ2d 1334, 1337 (TTAB 2006); <i>Tea Board of India v. Republic of Tea Inc.</i>, 80 USPQ2d 1881, 1897 (TTAB 2006); <i>DC Comics v. Pan American Grain Mfg. Co.</i>, 77 USPQ2d 1220, 1225 (TTAB 2005); and <i>Knight Textile Corp. v. Jones Investment Co.</i>, 75 USPQ2d 1313 (TTAB 2005).</p>
	<p>Added new Note 9, citing: <i>First Niagara Insurance Brokers Inc. v. First Niagara</i></p>

	<p><i>Financial Group Inc.</i>, 81 USPQ2d 1375 (Fed. Cir. 2007); <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i>, 90 USPQ2d 1112, 1118 n.8 (TTAB 2009); <i>Giersch v. Scripps Networks Inc.</i>, 90 USPQ2d 1020, 1022 (TTAB 2009); <i>Green Spot (Thailand) Ltd. v. Vitasoy International Holdings Ltd.</i>, 86 USPQ2d 1283 (TTAB 2008); <i>General Motors Corp. v. Aristide & Co., Antiquaire de Marques</i>, 87 USPQ2d 1179, 1181 (TTAB 2008); and <i>Kohler Co. v. Baldwin Hardware Corp.</i>, 82 USPQ2d 1100, 1106 (TTAB 2007).</p>
	<p>Added new cases to Note 10: <i>Nextel Communications Inc. v. Motorola Inc.</i>, 91 USPQ2d 1393, 1400 (TTAB 2009); <i>Hiraga v. Arena</i>, 90 USPQ2d 1102, 1106-7 (TTAB 2009); <i>IdeasOne Inc. v. Nationwide Better Health Inc.</i>, 89 USPQ2d 1952, 1953 (TTAB 2009); <i>Life Zone Inc. v. Middleman Group Inc.</i>, 87 USPQ2d 1953, 1959 (TTAB 2008), and <i>Great Seats Ltd. v. Great Seats Inc.</i>, 84 USPQ2d 1235, 1237 (TTAB 2007).</p>
	<p>Added new Note 12, citing: <i>Ritchie v. Simpson</i>, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); and <i>McDermott v. San Francisco Women's Motorcycle Contingent</i>, 81 USPQ2d 1212 (TTAB 2006), <i>aff'd</i>, <i>unpubl'd</i>, 240 Fed. Appx. 865 (Fed. Cir. 2007), <i>cert. den'd</i>, 128 S.Ct. 893, 169 L.Ed.2d 746 (2008).</p>
	<p>Added new cases to Note 14: <i>Finanz St. Honore B.V. v. Johnson & Johnson</i>, 85 USPQ2d 1478, 1479 (TTAB 2007); <i>Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas Inc.</i>, 77 USPQ2d 1492 (TTAB 2005); and <i>Great Seats Ltd. v. Great Seats Inc.</i>, 84 USPQ2d 1235, 1236 n.3 (TTAB 2007).</p>
	<p>Added new cases to Note 16: <i>Stuart Spector Designs, Ltd. v. Fender Musical Instruments Corp. U.S. Music Corp. v. Fender Musical Instruments Corp.</i>, 94 USPQ2d 1549 (TTAB 2009); <i>Corporacion Habanos S.A. v. Anncas Inc.</i>, 88 USPQ2d 1785 (TTAB 2008); <i>Saint-Gobain Corp. v. 3M Co.</i>, 90 USPQ2d 1425, 1428 (TTAB 2007); <i>Target Brands Inc. v.</i></p>

	<i>Hughes</i> , 85 USPQ2d 1676, 1679 (TTAB 2007); <i>Kellogg Co. v. General Mills Inc.</i> , 82 USPQ2d 1766, 1767 (TTAB 2007); and <i>Great Seats Ltd. v. Great Seats Inc.</i> , 84 USPQ2d 1235, 1244 n.10 (TTAB 2007).
	Added new Note 17, citing: <i>Enbridge, Inc. v. Excelerate Energy LP</i> , 92 USPQ2d 1537, 1543 n.10 (TTAB 2009), citing <i>Liberty Trouser Co., Inc. v. Liberty & Co., Ltd.</i> , 222 USPQ 357, 358 (TTAB 1983).
309.03(c) Grounds	Amended section to inform readers of requirements for claim brought on dilution grounds; amended section to inform readers of need to plead registrations upon which plaintiff may rely; moved discussion regarding <i>de jure</i> functional claim to Trademark Act § 2(e), as this is where the statute references that ground; amended statement of ground under Trademark Act § 2(a) to include immoral and deceptive elements; amended discussion under Section 2(a) to add discussion regarding claim that mark is geographical indicator; amended heading "(8)" to include claim that mark is a non-distinctive sound; and amended heading "(11)" to clarify elements involved in claim of abandonment.
	Added new cases to Note 1: <i>Enbridge, Inc. v. Excelerate Energy LP</i> , 92 USPQ2d 1537, 1543 n.10 (TTAB 2009); and <i>Nextel Communications Inc. v. Motorola Inc.</i> , 91 USPQ2d 1393, 1396 n.1 (TTAB 2009).
	Added new cases to Note 2: <i>McDermott v. San Francisco Womens Motorcycle Contingent</i> , 81 USPQ2d 1212, 1216 (TTAB 2006); <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581, 1586 (TTAB 2008); <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1530 (TTAB 2008); <i>Carano v. Vina Concha y Toro S.A.</i> , 67 USPQ2d 1149, 1152 (TTAB 2003); <i>Capital Speakers Inc. v. Capital Speakers Club of Washington D.C. Inc.</i> , 41 USPQ2d 1030, 1034 n.3 (TTAB 1996); <i>Bayer Consumer Care AG v. Belmora LLC</i> , 90 USPQ2d 1587 (TTAB 2009); <i>Franpovi SA v. Wessin</i> , 89 USPQ2d 1637 (TTAB 2009);

	<i>Demon International LC v. Lynch</i> , 86 USPQ2d 1058 (TTAB 2008); and <i>Tea Board of India v. Republic of Tea Inc.</i> , 80 USPQ2d 1881, 1884 n.3 (TTAB 2006).
	Added new Note 3, citing: Trademark Act § 43(c), 15 U.S.C. § 1125(c); <i>Citigroup Inc. v. Capital City Bank Group Inc.</i> , 94 USPQ2d 1645, 1649 (TTAB 2010); <i>Demon International LC v. Lynch</i> , 86 USPQ2d 1058, 1059-1060 (TTAB 2008); <i>Trek Bicycle Corp. v. StyleTrek Ltd.</i> , 64 USPQ2d 1540, 1542 (TTAB 2001); <i>Toro Co. v. ToroHead, Inc.</i> , 61 USPQ2d 1164, 1174 n.9 (TTAB 2001); and <i>Polaris Industries Inc. v. DC Comics</i> , 59 USPQ2d 1798 (TTAB 2000).
	Added new Note 4, citing: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.3 (TTAB 2009); and <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100, 1103 n.3 (TTAB 2007).
	Added new Note 5, citing: <i>B.V.D. Licensing Corp. v. Rodriguez</i> , 83 USPQ2d 1500, 1503 (TTAB 2007); <i>Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha</i> , 77 USPQ2d 1917, 1919-20 (TTAB 2006); and <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581, 1583, n.3 (TTAB 2008).
	Added new cases to Note 6: <i>Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772</i> , 73 USPQ2d 1689 (Fed. Cir. 2005); <i>Shen Manufacturing Co. v. Ritz Hotel Ltd.</i> , 73 USPQ2d 1350 (Fed. Cir. 2004); <i>In re Majestic Distilling Co.</i> , 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); <i>In re Dixie Restaurants Inc.</i> , 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); <i>First Niagara Insurance Brokers Inc. v. First Niagara Financial Group Inc.</i> , 81 USPQ2d 1375, 1378 (Fed. Cir. 2007); <i>Brown Shoe Co. v. Robbins</i> , 90 USPQ2d 1752, 1756 (TTAB 2009); <i>Giersch v. Scripps Networks Inc.</i> , 90 USPQ2d 1020, 1023 (TTAB 2009); <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581 (TTAB 2008); <i>Apple Computer v. TVNET.net Inc.</i> , 90 USPQ2d 1393 (TTAB 2007); <i>Life Zone Inc. v. Middleman Group</i>

	<p><i>Inc.</i>, 87 USPQ2d 1953, 1959 (TTAB 2008); <i>Black & Decker Corp. v. Emerson Electric Co.</i>, 84 USPQ2d 1482, 1490 (TTAB 2007); <i>Jansen Enterprises Inc. v. Rind</i>, 85 USPQ2d 1104, 1107 (TTAB 2007); <i>Christian Broadcasting Network Inc. v. ABS-CBN International</i>, 84 USPQ2d 1560, 1565 (TTAB 2007); <i>Fort James Operating Co. v. Royal Paper Converting Inc.</i>, 83 USPQ2d 1624 (TTAB 2007); <i>Miss Universe L.P., LLLP v. Community Marketing, Inc.</i>, 82 USPQ2d 1562 (TTAB 2007); <i>Kohler Co. v. Baldwin Hardware Corp.</i>, 82 USPQ2d 1100, 1113 (TTAB 2007).</p>
	<p>Added new cases to Note 7: <i>Cold War Museum Inc. v. Cold War Air Museum Inc.</i>, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009); <i>Yamaha International Corp. v. Hoshino Gakki Co. Ltd.</i>, 840 F.2d 1572, 6 USPQ2d 1001, 1005 (Fed. Cir. 1988); <i>Target Brands Inc. v. Hughes</i>, 85 USPQ2d 1676, 1680 (TTAB 2007); <i>Kellogg Co. v. General Mills Inc.</i>, 82 USPQ2d 1766, 1768 (TTAB 2007).</p>
	<p>Added new cases to Note 8: <i>Grand Canyon West Ranch LLC v. Hualapai Tribe</i>, 88 USPQ2d 1501, 1504 (TTAB 2008).</p>
	<p>Added new cases to Note 9: <i>Corporacion Habanos S.A. v. Anncas Inc.</i>, 88 USPQ2d 1785 (TTAB 2008); added parenthetical to <i>In re California Innovations, Inc.</i>, 329 F.3d 1334, 66 USPQ2d 1853 (Fed. Cir. 2003).</p>
	<p>Added new cases to Note 10: <i>In re Rath</i>, 402 F.3d 1207, 74 USPQ2d 1174 (Fed. Cir. 2005); and <i>In re Piano Factory Group Inc.</i>, 85 USPQ2d 1522 (TTAB 2007). Deleted the following from Note 10: “<i>Kellogg Co. v. Pack'Em Enterprises Inc.</i>, 14 USPQ2d 1545 (TTAB 1990), <i>aff'd</i>, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).”</p>
	<p>Added new Note 11, citing: <i>TrafFix Devices Inc. v. Marketing Displays Inc.</i>, 523 U.S. 23, 58 USPQ2d 1001, 1006 (2001); <i>Qualitex Co. v. Jacobson Products Co., Inc.</i>, 514 U.S. 159, 115 S.Ct. 1300, 131 L.Ed.2d 248, 34 USPQ2d 1161 (1995); <i>Stuart Spector Designs, Ltd. v. Fender Musical Instruments Corp.</i>, 94 USPQ2d 1549 (TTAB 2009); <i>Duramax</i></p>

	<i>Marine, LLC v. R.W. Fernstrum & Company</i> , 80 USPQ2d 1780 (TTAB 2006).
	Added new cases to Note 12: <i>Corporacion Habanos S.A. v. Anncas Inc.</i> , 88 USPQ2d 1785 (TTAB 2008); <i>United States Playing Card Co., v. Harbro, LLC</i> , 81 USPQ2d 1537 (TTAB 2006); and <i>In re California Innovations Inc.</i> , 329 F.3d 1334, 66 USPQ2d 1853, 1856 (Fed. Cir. 2003).
	Added new cases to Note 13: <i>In re Lebanese Arak Corp.</i> , 94 USPQ2d 1215 (TTAB 2010); <i>In re Heeb Media, LLC</i> , 89 USPQ2d 1071 (TTAB 2008); <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581 (TTAB 2008); <i>In re Squaw Valley Development Co.</i> , 80 USPQ2d 1264 (TTAB 2006); <i>McDermott v. San Francisco Womens Motorcycle Contingent</i> , 81 USPQ2d 1212 (TTAB 2006); <i>aff'd.</i> , 240 Fed.Appx. 865 (Fed.Cir. 2007) (<i>not selected for publication in the Federal Reporter</i> , No. 07-1101); <i>cert. denied</i> , 128 S.Ct. 893, 169 L.Ed.2d 746 (2008)(No. 07-7126); updated citation to <i>Harjo v. Pro-Football Inc.</i> , 50 USPQ2d 1705, 1740-48 (TTAB 1999), <i>rev'd</i> , 284 F. Supp. 2d 96, 125, 68 USPQ2d 1225, 1248 (D.D.C. 2003), <i>remanded</i> , 415 F.3d 44, 75 USPQ2d 1525 (D.C. Cir. 2005), and <i>aff'd</i> , 565 F.3d 880, 90 USPQ2d 1593 (D.C. Cir. 2009), <i>cert. denied</i> , 130 S. Ct. 631 (2009).
	Added new cases to Note 14: <i>Corporacion Habanos S.A. v. Anncas Inc.</i> , 88 USPQ2d 1785 (TTAB 2008); <i>Boston Red Sox Baseball Club Limited Partnership v. Sherman</i> , 88 USPQ2d 1581, 1588 (TTAB 2008); <i>Ritchie v. Simpson</i> , 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); <i>In re South Park Cigar, Inc.</i> , 82 USPQ2d 1507 (TTAB 2007); <i>In re Red Bull GmbH</i> , 78 USPQ2d 1375 (TTAB 2006); <i>In re Wilcher Corp.</i> , 40 USPQ2d 1929 (TTAB 1996); <i>In re Old Glory Condom Corp.</i> , 26 USPQ2d 1216, 1220 (TTAB 1993); <i>McDermott v. San Francisco Womens Motorcycle Contingent</i> , 81 USPQ2d 1212, 1214 (TTAB 2006), <i>aff'd. (unpub'd)</i> , 240 Fed.Appx. 865 (Fed. Cir. 2007) (<i>not selected</i>

	<i>for publication in the Federal Reporter</i> , No. 07-1101), <i>cert. denied</i> , 128 S.Ct. 893, 169 L.Ed.2d 746 (2008) (No. 07-7126).
	Added new cases to Note 15: <i>University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co. Inc.</i> , 703 F.2d 1372, 217 USPQ 505 (Fed.Cir.1983); <i>Boston Red Sox Baseball Club Limited Partnership v. Sherman</i> , 88 USPQ2d 1581, 1593 (TTAB 2008); <i>Greyhound Corp. v. Both Worlds Inc.</i> , 6 USPQ2d 1635 (TTAB 1988).
	Added new Note 16, citing: <i>See Tea Board of India v. Republic of Tea Inc.</i> , 80 USPQ2d 1881, 1899 (TTAB 2006); <i>In re Spirits International N.V.</i> , 86 USPQ2d 1078, 1080 n.2 (TTAB 2008); and <i>In re Wada</i> , 48 USPQ2d 1689, 1692 n.7 (TTAB 1998).
	Added new cases to Note 17: <i>Avakoff v. Southern Pacific Co.</i> , 765 F.2d 1097, 226 USPQ 435 (Fed. Cir. 1985); <i>Nutrasweet Company v. K & S Foods Inc.</i> , 4 USPQ2d 1964 (TTAB 1987); <i>Sinclair Oil Corp. v. Kendrick</i> , 85 USPQ2d 1032, 1033 (TTAB 2007)
	Added new cases to Note 18: <i>Honda Motor Co., Ltd. v. Friedrich Winkelmann</i> , 90 USPQ2d 1660 (TTAB 2009); <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581, 1587 (TTAB 2008); and <i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629, 1643 (TTAB 2007).
	Added new cases to Note 19: <i>In re Grande Cheese Co.</i> , 2 USPQ2d 1447 (TTAB 1986); and updated citation to <i>General Foods Corp. v. Ito Yokado Co., Ltd.</i> , 219 USPQ 822, 825 (TTAB 1983), <i>aff'd (unpub'd)</i> , 84-517 (Fed. Cir. 1984).
	Added new case to Note 20: <i>Ballet Tech Foundation, Inc. v. The Joyce Theater Foundation, Inc.</i> , 89 USPQ2d 1262 (TTAB 2008).
	Added new cases to Note 21: <i>Qualitex Co. v. Jacobson Prods. Co.</i> , 514 U.S. 159, 115 S.Ct. 1300, 131 L.Ed.2d 248 (1995); <i>Nasalok Coating Corp. v. Nylok Corp.</i> , 522 F.3d 1320, 86 USPQ2d 1369 (Fed. Cir. 2008); <i>Brunswick</i>

	<i>Corp. v. British Seagull Ltd.</i> , 35 F.3d 1527, 32 USPQ2d 1120 (Fed. Cir. 1994); <i>In re Owens-Corning Fiberglas Corp.</i> , 774 F.2d 1116, 227 USPQ 417, (Fed. Cir.1985).
	Added new Note 22, citing: Trademark Act §§ 1, 2 and 45, 15 U.S.C. §§ 1051, 1052 and 1127; <i>Nextel Communications Inc. v. Motorola Inc.</i> , 91 USPQ2d 1393 (TTAB 2009); and <i>In re Vertex Group LLC</i> , 89 USPQ2d 1694, 1700 (TTAB 2009).
	Added parenthetical to case in Note 23: <i>Aycock Engineering, Inc. v. Airflite, Inc.</i> , 560 F.3d 1350, 90 USPQ2d 1301, 1309 n.12 (Fed. Cir. 2009); and updated citation for <i>Anheuser-Busch Inc. v. The Florists Association of Greater Cleveland, Inc.</i> , 29 USPQ2d 1146, 1160 (TTAB 1993).
	Added new case to Note 24: <i>In re Dial-A-Mattress Operating Corp.</i> , 240 F.3d 1341, 1347, 57 USPQ2d 1807, 1812-1813 (Fed. Cir. 2001).
	Added new cases to Note 25: <i>General Motors Corp. v. Aristide & Co.</i> , <i>Antiquaire de Marques</i> , 87 USPQ2d 1179 (TTAB 2008); and <i>Otto International Inc. v. Otto Kern GmbH</i> , 83 USPQ2d 1861, 1863 (TTAB 2007).
	Added new cases to Note 26: <i>Stuart Spector Designs, Ltd. v. Fender Musical Instruments Corp. U.S. Music Corporation v. Fender Musical Instruments Corp.</i> , 94 USPQ2d 1549 (TTAB 2009); <i>Ballet Tech Foundation, Inc. v. The Joyce Theater Foundation, Inc.</i> , 89 USPQ2d 1262 (TTAB 2008); and <i>Tea Board of India v. The Republic of Tea, Inc.</i> 80 USPQ2d 1881 (TTAB 2006).
	Added new cases to Note 27: <i>Chester L. Krause v. Krause Publications, Inc.</i> , 76 USPQ2d 1904 (TTAB 2005); and <i>Societe Civile Des Domaines Dourthe Freres v. S.A. Consortium Vinicole De Bordeaux Et De La Gironde</i> , 6 USPQ2d 1205 (TTAB 1988).
	Added new case to Note 28: <i>Stuart Spector Designs, Ltd. v. Fender Musical Instruments Corp. U.S. Music Corporation v. Fender Musical Instruments Corp.</i> , 94 USPQ2d 1549 (TTAB 2009).

	Added new reference and cases to Note 29: Trademark Act § 43(c), 15 U.S.C. § 1125(c); <i>Citigroup Inc. v. Capital City Bank Group Inc.</i> , 94 USPQ2d 1645, 1649 (TTAB 2010); <i>Demon International LC v. Lynch</i> , 86 USPQ2d 1058, 1059-1060 (TTAB 2008); <i>Trek Bicycle Corp. v. StyleTrek Ltd.</i> , 64 USPQ2d 1540, 1542 (TTAB 2001); <i>Toro Co. v. ToroHead, Inc.</i> , 61 USPQ2d 1164, 1174 n.9 (TTAB 2001); <i>Polaris Industries Inc. v. DC Comics</i> , 59 USPQ2d 1798 (TTAB 2000). <i>But see, Fiat Group Automobiles, S.p.A. v. ISM, Inc.</i> , 94 USPQ2d 1111 (TTAB 2010).
	Added new Note 30, citing: <i>Bayer Consumer Care AG v. Belmora LLC</i> , 90 USPQ2d 1587 (TTAB 2009); <i>Otto International Inc. v. Otto Kern GmbH</i> , 83 USPQ2d 1861, 1863 (TTAB 2007); <i>The E.E. Dickinson Co. v. The T.N. Dickinson Company</i> , 221 USPQ 713 (TTAB 1984).
	Added new Note 31, citing: <i>Copelands' Enterprises Inc. v. CNV Inc.</i> , 20 USPQ2d 1295 (Fed. Cir. 1991); <i>Brown Shoe Co. v. Robbins</i> , 90 USPQ2d 1752 (TTAB 2009); <i>Barbara's Bakery Inc. v. Landesman</i> , 82 USPQ2d 1283, 1290 (TTAB 2007); <i>Johnson Controls, Inc. v. Concorde Battery Corp.</i> , 228 USPQ 39, 44 (TTAB 1985); <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i> , 89 USPQ2d 1844 n.3 (TTAB 2008); and <i>Federated Foods, Inc. v. Fort Howard Paper Co.</i> , 544 F.2d 1098, 192 USPQ 24, 27 (CCPA 1976).
	Added new Note 32, citing: Fed. R. Civ. P. 9(b); <i>In re Bose Corp.</i> , 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009); <i>DaimlerChrysler Corp. v. American Motors Corp.</i> , 94 USPQ2d 1086 (TTAB 2010); <i>Enbridge, Inc. v. Excelerate Energy Limited Partnership</i> , 92 USPQ2d 1537 (TTAB 2009); <i>Exergen Corp. v. Wal-Mart Stores Inc.</i> , 91 USPQ2d 1656, 1670 (Fed. Cir. 2009), citing <i>Kowal v. MCI Communications Corp.</i> , 16 F.3d 1271, 1279 n.3 (D.C. Cir. 1994); <i>Torres v. Cantine Torresella S.r.l.</i> , 808 F.2d 46 (Fed. Cir. 1986); <i>King Auto., Inc. v. Speedy Muffler</i>

	<p><i>King, Inc.</i>, 667 F.2d 1008, 212 USPQ 801, 803 (CCPA 1981); <i>Smith Int'l, Inc. v. Olin Corp.</i>, 209 USPQ 1033, 1044 (TTAB 1981); <i>G&W Laboratories Inc. v. GW Pharma Ltd.</i>, 89 USPQ2d 1571, 1574 (TTAB 2009); <i>Grand Canyon West Ranch LLC v. Hualapai Tribe</i>, 88 USPQ2d 1501, 1509 (TTAB 2008); <i>Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha</i>, 77 USPQ2d 1917 (TTAB 2006); <i>Asian and Western Classics B.V. v. Selkow</i>, 92 USPQ2d 1478 (TTAB 2009); <i>Zanella Ltd. v. Nordstrom Inc.</i>, 90 USPQ2d 1758, 1762 (TTAB 2008); <i>University Games Corp. v. 20Q.net Inc.</i>, 87 USPQ2d 1465 (TTAB 2008); <i>Tri-Star Marketing LLC v. Nino Franco Spumanti S.R.L.</i>, 84 USPQ2d 1912, 1916 (TTAB 2007); and <i>Medinol Ltd. v. Neuro Vasx, Inc.</i>, 67 USPQ2d 1205 (TTAB 2003).</p>
	<p>Added new Note 33, citing: <i>British-American Tobacco Co. v. Phillip Morris Inc.</i>, 55 USPQ2d 1585 (TTAB 2000); and <i>Diaz v. Servicios De Franquicia Pardo's S.A.C.</i>, 83 USPQ2d 1320, 1322 (TTAB 2007).</p>
	<p>Added new Note 34, citing: <i>Nasalok Coating Corp. v. Nylok Corp.</i>, 522 F.3d 1320, 86 USPQ2d 1369 (Fed. Cir. 2008), by comparison; and <i>Nextel Communications Inc. v. Motorola Inc.</i>, 91 USPQ2d 1393, 1398 (TTAB 2009).</p>
	<p>Added new Note 35, citing: Trademark Act § 2(d); <i>West Florida Seafood, Inc., v. Jet Restaurants, Inc.</i> 31 F.2d 1122, 31 USPQ2d 1660, 1663 (Fed. Cir. 1994); <i>Life Zone Inc. v. Middleman Group Inc.</i>, 87 USPQ2d 1953, 1960 (TTAB 2008); <i>Media Online Inc. v. El Clasificado Inc.</i>, 88 USPQ2d 1285, 1287 (TTAB 2008); and <i>Kohler Co. v. Baldwin Hardware Corp.</i>, 82 USPQ2d 1100, 1108 (TTAB 2007).</p>
	<p>New cases added to Note 36: <i>Cunningham v. Laser Golf Corp.</i>, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i>, 90 USPQ2d 1112, 1119 (TTAB 2009); <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i>, 89 USPQ2d 1844, 1852 (TTAB 2008);</p>

	<p><i>H.D. Lee Co. v. Maidenform Inc.</i>, 87 USPQ2d 1715, 1722 (TTAB 2008); <i>Media Online Inc. v. El Clasificado Inc.</i>, 88 USPQ2d 1285 (TTAB 2008); <i>Kohler Co. v. Baldwin Hardware Corp.</i>, 82 USPQ2d 1100, 1108 (TTAB 2007); <i>B.V.D. Licensing Corp. v. Rodriguez</i>, 83 USPQ2d 1500, 1505 (TTAB 2007); <i>L. & J.G. Stickley, Inc. v. Ronald C. Cosser</i>, 81 USPQ2d 1956 (TTAB 2007); <i>Fram Trak Industries Inc. v. WireTracks LLC</i>, 77 USPQ2d 2000, 2005 (TTAB 2006); <i>Perma Ceram Enterprises Inc. v. Preco Industries Ltd.</i>, 23 USPQ2d 1134 (TTAB 1992); <i>Diaz v. Servicios De Franquicia Pardo's S.A.C.</i>, 83 USPQ2d 1320, 1322 (TTAB 2007); <i>CDS Inc. v. I.C.E.D. Management, Inc.</i>, 80 USPQ2d 1572, 1580 (TTAB 2006); and <i>Aktieselskabet af 21 November 2001 v. Fame Jeans, Inc.</i>, 77 USPQ2d 1861, 1864 (TTAB 2006), <i>motion granted</i>, 511 F.Supp.2d 1 (D.D.C. 2007), <i>aff'd in part and rev'd in part</i>, 525 F3d 8, 86 USPQ2d 1527 (Fed. Cir. 2008).</p>
	<p>New cases added to Note 37: <i>Brown Shoe Co. v. Robbins</i>, 90 USPQ2d 1752, 1754 (TTAB 2009); <i>Christian Broadcasting Network Inc. v. ABS-CBN International</i>, 84 USPQ2d 1560, 1565 (TTAB 2007); <i>Tea Board of India v. Republic of Tea Inc.</i>, 80 USPQ2d 1881, 1897 (TTAB 2006); <i>Truescents LLC v. Ride Skin Care LLC</i>, 81 USPQ2d 1334 (TTAB 2006); and <i>Kohler Co. v. Baldwin Hardware Corp.</i>, 82 USPQ2d 1100, 1106 (TTAB 2007). Moved location of citation to <i>Kohler C. v. Baldwin Hardware Corp.</i>, 82 USPQ2d 1100 (TTAB 2007). Deleted from Note 37: "<i>Brewski Beer Co. v. Brewski Brothers Inc.</i>, 47 USPQ2d 1281, 1284 (TTAB 1998) (if the underlying application filing date of petitioner's pleaded registration was earlier than the filing date of respondent's underlying application, petitioner could take its chances and elect to make of record simply a copy of its registration as proof of first use as of the filing date of the underlying application); <i>American Standard Inc. v. AQM Corporation</i>, 208 USPQ 840, 842 (TTAB 1980); and <i>Gor-Ray Limited</i></p>

	<i>v. Garay & Co., Inc.</i> , 167 USPQ 694 (TTAB 1970) (a cancellation petitioner is entitled to rely on the filing date of its pleaded registration as prima facie evidence of its first use of the mark).”
	New cases added to Note 38: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1119 (TTAB 2009); <i>Giersch v. Scripps Networks Inc.</i> , 90 USPQ2d 1020, 1023 (TTAB 2009); <i>Mattel Inc. v. Funline Merchandise Co.</i> , 81 USPQ2d 1372, 1374 (TTAB 2006); <i>Green Spot (Thailand) Ltd. v. Vitasoy International Holdings Ltd.</i> , 86 USPQ2d 1283, 1284 (TTAB 2008); <i>General Motors Corp. v. Aristide & Co., Antiquaire de Marques</i> , 87 USPQ2d 1179 (TTAB 2008); <i>Fair Indigo LLC v. Style Conscience</i> , 85 USPQ2d 1536 (TTAB 2007); <i>Jansen Enterprises Inc. v. Rind</i> , 85 USPQ2d 1104, 1107 (TTAB 2007); and <i>NASDAQ Stock Market Inc. v. Antartica S.r.l.</i> , 69 USPQ2d 1718 (TTAB 2003).
	New cases added to Note 39: <i>West Florida Seafood, Inc., v. Jet Restaurants, Inc.</i> , 31 F.2d 1122, 31 USPQ2d 1660 (Fed. Cir. 1994); <i>Fair Indigo LLC v. Style Conscience</i> , 85 USPQ2d 1536, 1539 (TTAB 2007); <i>L. & J.G. Stickley Inc. v. Cosser</i> , 81 USPQ2d 1956, 1965 (TTAB 2007); and <i>Westrex Corp. v. New Sensor Corp.</i> , 83 USPQ2d 1215, 1218 (TTAB 2007).
	New cases added to Note 40: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1119 (TTAB 2009); <i>L.C. Licensing Inc. v. Berman</i> , 86 USPQ2d 1883, 1887 (TTAB 2008); <i>Demon International LC v. Lynch</i> , 86 USPQ2d 1058, 1060 (TTAB 2008); <i>Fort James Operating Co. v. Royal Paper Converting Inc.</i> , 83 USPQ2d 1624, 1626 (TTAB 2007); <i>Apple Computer v. TVNET.net Inc.</i> , 90 USPQ2d 1393, 1396 (TTAB 2007); <i>Teledyne Technologies Inc. v. Western Skyways Inc.</i> , 78 USPQ2d 1203, 1206 (TTAB 2006) <i>aff’d</i> unpub. op., Appeal Nos. 2006-1366, 1367 (Fed. Cir. Dec. 6, 2006); <i>DC Comics v. Pan American Grain Mfg. Co.</i> , 77 USPQ2d 1220, 1225 (TTAB 2005); and <i>Bass</i>

	<i>Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i> , 89 USPQ2d 1844, 1851 (TTAB 2008).
	New cases added to Note 41: <i>Massey Junior College, Inc. v. Fashion Institute of Technology</i> , 492 F.2d 1399, 181 USPQ 272, n.6 (CCPA 1974); <i>Vitaline Corp. v. General Mills Inc.</i> , 891 F.2d 273, 13 USPQ2d 1172 (Fed. Cir. 1989); and <i>Fort James Operating Co. v. Royal Paper Converting Inc.</i> , 83 USPQ2d 1624, 1626 n.1 (TTAB 2007). Also added citation to 37 CFR § 2.106(b)(2)(ii).
	New cases added to Note 42: <i>Association pour la Defense et la Promotion de l'Oeuvre de Marc Chagall dite Comite Marc Chagall v. Bondarchuk</i> , 82 USPQ2d 1838 (TTAB 2007) and <i>Order of Sons of Italy in America v. Profumi Fratelli Nostra AG</i> , 36 USPQ2d 1221 (TTAB 1995). Also updated citation to <i>Jewelers Vigilance Committee Inc. v. Ullenberg Corp.</i> , 823 F.2d 490, 2 USPQ2d 2021 (Fed. Cir. 1987), on remand, 5 USPQ2d 1622 (TTAB 1987), <i>rev'd</i> , 853 F.2d 888, 7 USPQ2d 1628 (Fed. Cir. 1988).
	New cases added to Note 43: <i>Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772</i> , 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); <i>Hewlett-Packard Co. v. Packard Press Inc.</i> , 62 USPQ2d 1001 (Fed. Cir. 2002); <i>Cunningham v. Laser Golf Corp.</i> , 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); <i>Brown Shoe Co. v. Robbins</i> , 90 USPQ2d 1752, 1756 (TTAB 2009); <i>Giersch v. Scripps Networks Inc.</i> , 90 USPQ2d 1020 (TTAB 2009); <i>H.D. Lee Co. v. Maidenform Inc.</i> , 87 USPQ2d 1715, 1723 (TTAB 2008); <i>Fort James Operating Co. v. Royal Paper Converting Inc.</i> , 83 USPQ2d 1624 (TTAB 2007); <i>B.V.D. Licensing Corp. v. Rodriguez</i> , 83 USPQ2d 1500, 1505 (TTAB 2007); <i>Truescents LLC v. Ride Skin Care LLC</i> , 81 USPQ2d 1334, 1342 (TTAB 2006); <i>Tea Board of India v. Republic of Tea Inc.</i> , 80 USPQ2d 1881, 1897 (TTAB 2006); <i>Teledyne Technologies Inc. v. Western Skyways Inc.</i> , 78 USPQ2d 1203, 1206 (TTAB 2006) <i>aff'd</i>

	unpub'd op., Appeal Nos. 2006-1366, 1367 (Fed. Cir. Dec. 6, 2006); <i>DC Comics v. Pan American Grain Mfg. Co.</i> , 77 USPQ2d 1220, 1228 (TTAB 2005); <i>Alfacell Corp. v. Anticancer Inc.</i> , 71 USPQ2d 1301, 1306 (TTAB 2004); <i>Time Warner Entertainment Co. v. Jones</i> , 65 USPQ2d 1650, 1657 (TTAB 2002); and <i>Baroid Drilling Fluids Inc. v. Sun Drilling Products</i> , 24 USPQ2d 1048, 1052-1053 (TTAB 1992).
	New cases added to Note 44: <i>Odom's Tennessee Pride Sausage, Inc. v. FF Acquisition, L.L.C.</i> , 600 F.3d 1343, 93 USPQ2d 2030, 2032 (Fed. Cir. 2010); <i>Shen Manufacturing Co. v. Ritz Hotel Ltd.</i> , 73 USPQ2d 1350, 1353 (Fed. Cir. 2004); <i>Kellogg Co. v. Pack'em Enterprises Inc.</i> , 14 USPQ2d 1545 (TTAB 1990), <i>aff'd</i> , 21 USPQ2d 1142 (Fed. Cir. 1991); <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581 (TTAB 2008); <i>Mattel Inc. v. Funline Merchandise Co.</i> , 81 USPQ2d 1372, 1374 (TTAB 2006); and <i>Truescents LLC v. Ride Skin Care LLC</i> , 81 USPQ2d 1334, 1342 (TTAB 2006).
	Updated reference in Note 45 to show that Fed. R. Civ. P. 8(e)(2) has been replaced by 8(d)(2).
	New cases added to Note 46: <i>John T. Clark Company v. Colgate-Palmolive Company</i> , 176 USPQ 93 (TTAB 1972); <i>Taffy's of Cleveland, Inc. v. Taffy's, Inc.</i> , 189 USPQ 154 (TTAB 1975); and <i>Lia Jene Inc. v. Vitabath, Inc.</i> , 162 USPQ 469, 470 (TTAB 1969).
	Updated citation in Note 47 for <i>Revco, D.S., Inc. v. Armour-Dial, Inc.</i> , 170 USPQ 48 (TTAB 1971).
309.03(d) Remedy Under Trademark Act § 18, 15 U.S.C. § 1068 (Partial Opposition or Partial Cancellation) (new title)	Updated reference to Trademark Act § 18 and to 37 CFR § 2.133(b) to reflect statutory and rule changes.
	Added cross-reference to Chapter 1100 in first paragraph. Clarified, in second paragraph, that claim under Trademark Act § 18 may be sought separately and apart from, or in addition to, any other ground; that claim is

	equitable; and distinguishable from “straightforward” pleading of abandonment.
	Added new subheading to third paragraph regarding claims to restrict or limit goods or services in involved application or registration. Added new subheading to seventh paragraph regarding claims to restrict or rectify with respect to the register, and added new ninth paragraph regarding disclaimers for generic terms where registration less than five years old.
	Added new cases to Note 1: <i>Montecash LLC v. Anzar Enterprises, Inc.</i> , 95 USPQ2d 1060, 1063 (TTAB 2010); and, by comparison, <i>ProQuest Information and Learning Co. v. Island</i> , 83 USPQ2d 1351 (TTAB 2007).
	Added new case to Note 2: <i>Jansen Enterprises Inc. v. Rind</i> , 85 USPQ2d 1104, 1106 n.3 (TTAB 2007);
	Added new case to Note 3: <i>Montecash LLC v. Anzar Enterprises, Inc.</i> 95 USPQ2d 1060, 1063 (TTAB 2010).
	Added new Note 4, citing: <i>Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG</i> , 34 USPQ2d 1266, 1271 & 1271 n.3 (TTAB 1994); and, by “see also,” <i>DAK Industries Inc. v. Daiichi Kosho Co.</i> , 35 USPQ2d 1434, 1437 (TTAB 1995).
	Amended Note 5 by deleting the following from parenthetical to <i>Milliken & Co. v. Image Industries Inc.</i> , 39 USPQ2d 1192 (TTAB 1996): “a counterclaim to restrict an identification of goods, as opposed to a counterclaim to delete specific identified items, is not a proper claim of abandonment.”
	Relocated Note 6, renumbered as new Note 5, citing: <i>DAK Industries Inc. v. Daiichi Kosho Co.</i> , 35 USPQ2d 1434, 1437 (TTAB 1995) and “see also,” <i>Milliken & Co. v. Image Industries Inc.</i> , 39 USPQ2d 1192 (TTAB 1996); amended parenthetical to <i>Dak Industries</i> by inserting “on the grounds that opposer was no longer using and had no intent to resume use of its mark on such goods,” following “open reel audio tape.”

	Added new case to Note 6: <i>IdeasOne Inc. v. Nationwide Better Health Inc.</i> , 89 USPQ2d 1952 (TTAB 2009).
	In Notes 7 and 8, corrected pin cite to “ <i>Eurostar Inc.</i> ” from 1270 to 1271; and added parentheticals for both cases cited in Note 7, namely: <i>DAK Industries Inc. v. Daiichi Kosho Co.</i> , 35 USPQ2d 1434, 1437 (TTAB 1995); and <i>Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG</i> , 34 USPQ2d 1266, 1271 (TTAB 1994).
	Added new case to Note 12: <i>IdeasOne Inc. v. Nationwide Better Health Inc.</i> , 89 USPQ2d 1952, 1953 (TTAB 2009).
	Added new case to Note 14: <i>ProQuest Information and Learning Co. v. Island</i> , 83 USPQ2d 1351, 1353 (TTAB 2007); changed the parenthetical to <i>Milliken & Co. v. Image Industries Inc.</i> , 39 USPQ2d 1192 (TTAB 1996) to clarify reasons counterclaim therein was insufficient.
	Added new Note 15, citing: <i>Montecash LLC v. Anzar Enterprises, Inc.</i> 95 USPQ2d 1060, 1063 (TTAB 2010); and <i>Kellogg Co. v. Pack'em Enterprises, Inc.</i> , 14 USPQ2d 1545 (TTAB 1990).
	Added new case to Note 16, by comparison: <i>ProQuest Information and Learning Co. v. Island</i> , 83 USPQ2d 1351, 1353 (TTAB 2007).
	Added new Note 19, citing: 37 CFR § 2.106(b)(2)(ii).
309.04 Defects In Complaint That May Affect Institution Of Proceeding	Changed “misidentified by mistake” to “misidentified through mistake” in paragraph 1, to conform with 37 CFR § 2.102(b).
	Amended paragraphs 1 through 3 regarding circumstances where fees will be refunded, and amended paragraphs 1 through 4, regarding circumstances where fees will not be refunded, to compare effect of premature, late, or otherwise defective filings made through ESTTA with those made on paper.
	Further amended paragraph 1, regarding circumstances where fees will not be refunded, to indicate that insufficiency of pleading must be raised by motion.

	Added new paragraph 4, regarding circumstances where fees will not be refunded, to advise that fee will not be refunded if proceeding is instituted against the incorrect number due to filer's error.
	Added new Note 1, citing: <i>Records Inc. v. Vibe Media Group LLC</i> , 88 USPQ2d 1280 (TTAB 2008).
	Added new Note 2 to include citations to 37 CFR § 2.194(b)(1) and <i>Yahoo! Inc., v. Loufrani</i> , 70 USPQ2d 1735, 1736 (TTAB 2004).
310 Notification To Parties Of Proceeding And Setting Time To Answer	Section Heading only.
310.01 Notification To Parties Of Proceeding	Amended references to 37 CFR section citations to reflect 2007 changes to Trademark Rules. Amended text throughout section by changing "notification" to "institution order."
	Amended first and second paragraphs to indicate that proceeding will be instituted following filing of opposition or cancellation with proof of service and required fee; deleted references to Board's obtaining copies of paper files. Updated third paragraph to note that Board will check assignment records for petitions to cancel filed on paper and that petition should indicate current owner of record.
	Amended fourth paragraph by adding that institution order includes scheduling order pursuant to 2007 changes to trademark rules, which may be sent by e-mail where party has provided an e-mail address.
	Added new paragraph to inform readers that additional notice may be given where institution order is returned as being undeliverable. Amended sixth paragraph to conform subsection to rules changes regarding address of plaintiff to which notifications are sent and amended seventh paragraph to conform same regarding address of defendant. Deleted references to Board sending copies of complaint to defendants as this is no longer Board practice under the rules as amended in 2007.

	Amended final paragraph to indicate that in cancellation, Board will send current owner a courtesy copy of the notification and electronic link for viewing the petition through TTABVue if defendant identified by plaintiff is not the record owner of mark.
	Added new Note 3, citing: 37 CFR § 2.113.
	Added new citations to Note 4: <i>Smart Inventions Inc. v. TMB Products LLC</i> , 81 USPQ2d 1383, 1384 (TTAB 2006); and 37 CFR § 3.73(b)(1).
	Added new Note 5, citing: 37 CFR §§ 2.112(a) and (b).
	Added new Note 6, citing Miscellaneous Changes to Trademark Trial and Appeal Board Rules 72, Fed. Reg. 42242, 42243 (August 1, 2007).
	Added new citation to Note 7: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42243 (August 1, 2007).
	Added new Note 8, citing: 37 CFR § 2.105(a).
	Added new Note 9, citing: 37 CFR § 2.118; and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42243-4 (August 1, 2007).
	Added new Note 10, citing: 37 CFR § 2.105(b)(1); and 37 CFR § 2.113(b)(1).
	Added new Note 11, citing: 37 CFR § 2.105(b)(3); 37 CFR § 2.113(b)(3).
	Added new citation to Note 15: by comparison, Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42243 (August 1, 2007). Deleted “published in the Federal Register on August 22, 1989 at 54 FR 34886, 34891” from citation to Notice of Final Rulemaking, 54 Fed. Reg. 34886, 34891 (August 22, 1989).
310.02 Defendant's Copy Of Institution Order Returned As Undeliverable (new title)	Replaced "Complaint" in the Heading with "Institution Order."

	Added reference to 37 § CFR 2.118.
	Amended subsection to inform readers that notice of an opposition proceeding may be given by publication in the Official Gazette whenever Board's notification is returned as being undeliverable or where plaintiff advises Board that service copy was returned as being undeliverable and Board is unable to locate defendant.
	Added new Note 1, citing: 37 CFR § 2.118; added new reference in Note 2: 37 CFR § 2.118; Miscellaneous Changes to Trademark Trial and Appeal Board Rules 72 Fed. Reg. 42242, 42244 (August 1, 2007).
310.03 Setting Time For Filing Answer	Section Heading only.
310.03(a) In General	Amended references to 37 CFR §§ 2.105 and 2.113 to reflect recent changes; updated signal from <i>cf.</i> to <i>see</i> in citation in Note 1 to: <i>Nabisco Brands Inc. v. Keebler Co.</i> , 28 USPQ2d 1237, 1238 (TTAB 1993).
310.03(b) 37 CFR 2.119(c) Five-Day Addition Under 37 CFR § 2.119(c) Not Applicable to Deadlines Set by Board (new title)	Changed title by moving wording “Under 37 CFR § 2.119(c)” to middle of title and converting “5” to “Five.”
	Added new Note 1, citing: <i>Amazon Technologies, Inc. v. Jefferey S. Wax</i> , 95 USPQ2d 1865, 1867 n.4 (TTAB 2010).
	Added new Note 2, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules 72 Fed. Reg. 42242, 42250 (August 1, 2007).
310.03(c) Extension of Time to File Answer	Added new Note 1, citing: Fed. R. Civ. P. 6(b).
311 Form And Content Of Answer	Section Heading only.
311.01 Form Of Answer	Amended references to 37 CFR § 2.126 to reflect recent changes; amended second paragraph to inform readers that Board will no longer accept submission in CD-ROM format if the submission could otherwise have been submitted on paper; changed reference to 37

	CFR § 2.126(c) to § 2.126(b); added new Note 3, citing: 37 CFR §§ 2.126(a) and (b).
311.01(a) Format for Answer	Deleted reference to allowable filing on CD-ROM.
311.01(b) Signature of Answer	Replaced reference to 37 CFR § 2.193(c)(1)(iii) with reference to 37 CFR § 2.193(c); added information regarding electronic signatures in ESTTA.
	Added new Note 2, citing: <i>PPG Industries Inc. v. Guardian Industries Corp.</i> , 73 USPQ2d 1926, 1928 (TTAB 2005); and <i>Schott AG v. Scott</i> , 88 USPQ2d 1862, 1863 n.3 (TTAB 2008).
	Added new Note 3, citing: <i>PPG Industries Inc. v. Guardian Industries Corp.</i> , 73 USPQ2d 1926, 1928 (TTAB 2005).
	Added new Note 4, citing, by comparison: TBMP § 712.01(a)(i).
311.01(c) Filing and Service of Answer	No changes made.
311.02 Substance Of Answer	No changes made.
311.02(a) Admissions and Denials	Added "jurisdictional grounds" to allegations defendant may controvert by way of general denial and removed reference to "some of the allegations" in discussion of general denials; added new Note 3, citing: Fed. R. Civ. P. 8(b)(3).
311.02(b) Affirmative Defenses	Expanded discussion of restrictions by defendants to identification of goods as affirmative defenses.
	Added information about when affirmative defenses start to run in cancellation actions; added new fourth paragraph noting that fair use defense is inapplicable to Board proceedings; added new reference to TBMP Chapter 1100.
	New cases added to Note 2: <i>Giersch v. Scripps Networks Inc.</i> , 90 USPQ2d 1020, 1021 n.4 (TTAB 2009); <i>Green Spot (Thailand) Ltd. v. Vitasoy International Holdings Ltd.</i> , 86 USPQ2d 1283 (TTAB 2008); <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1530 (TTAB 2008); <i>Tea Board of India v. Republic of Tea Inc.</i> , 80 USPQ2d

	<p>1881, 1884 n.6 (TTAB 2006); <i>Textron, Inc. v. The Gillette Company</i>, 180 USPQ 152, 154 (TTAB 1973); <i>Land O' Lakes Inc. v. Hugunin</i>, 88 USPQ2d 1957, 1958 (TTAB 2008); <i>Teledyne Technologies Inc. v. Western Skyways Inc.</i>, 78 USPQ2d 1203, 1209 (TTAB 2006) <i>aff'd</i> unpublished op., Appeal Nos. 2006-1366, -1367 (Fed. Cir. Dec. 6, 2006); <i>Nasalok Coating Corp. v. Nylok Corp.</i>, 522 F.3d 1320, 86 USPQ2d 1369 (Fed. Cir. 2008); <i>Mayer/Berkshire Corp. v. Berkshire Fashions Inc.</i>, 76 USPQ2d 1310 (Fed. Cir. 2005); <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i>, 87 USPQ2d 1526, 1530 (TTAB 2008); <i>B.V.D. Licensing Corp. v. Rodriguez</i>, 83 USPQ2d 1500 (TTAB 2007); <i>Herbaceuticals Inc. v. Xel Herbaceuticals Inc.</i>, 86 USPQ2d 1572, 1575 n.3 (TTAB 2008); <i>Jansen Enterprises Inc. v. Rind</i>, 85 USPQ2d 1104, 1116 (TTAB 2007); <i>Christian Broadcasting Network Inc. v. ABS-CBN International</i>, 84 USPQ2d 1560, 1572 (TTAB 2007); <i>Barbara's Bakery Inc. v. Landesman</i>, 82 USPQ2d 1283, 1292 n.14 (TTAB 2007); <i>Chester L. Krause v. Krause Publications, Inc.</i>, 76 USPQ2d 1904 (TTAB 2005); <i>Diaz v. Servicios De Franquicia Pardo's S.A.C.</i>, 83 USPQ2d 1320, 1322 (TTAB 2007); <i>Truescents LLC v. Ride Skin Care LLC</i>, 81 USPQ2d 1334, 1338; and <i>Great Seats Ltd. v. Great Seats Inc.</i>, 84 USPQ2d 1235, 1244 n.10 (TTAB 2007).</p>
	New rules citations added to Note 4: 37 CFR §§ 2.99(h) and 2.133(c).
	Reference to new TBMP section added after Note 5: TBMP § 309.03(b).
	<p>New cases added to Note 5: <i>Montecash LLC v. Anzar Enterprises, Inc.</i> 95 USPQ2d 1060 (TTAB 2010); <i>Finanz St. Honore B.V. v. Johnson & Johnson</i>, 85 USPQ2d 1478, 1480 (TTAB 2007); <i>IdeasOne Inc. v. Nationwide Better Health Inc.</i>, 89 USPQ2d 1952, 1954 (TTAB 2009); <i>ProQuest Information and Learning Co. v. Island</i>, 83 USPQ2d 1351, 1353 (TTAB 2007); <i>Tea Board of India v. Republic of Tea Inc.</i>, 80 USPQ2d 1881, 1898</p>

	(TTAB 2006); and <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i> , 89 USPQ2d 1844, 1846 (TTAB 2008).
	New cases added to Note 6: <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1531 (TTAB 2008); <i>Jansen Enterprises Inc. v. Rind</i> , 85 USPQ2d 1104, 1114 (TTAB 2007); <i>Barbara's Bakery Inc. v. Landesman</i> , 82 USPQ2d 1283, 1292 n. 14 (TTAB 2007). <i>But see, Fishking Processors Inc. v. Fisher King Seafoods Ltd.</i> , 83 USPQ2d 1762 (TTAB 2007).
	New cases added to Note 7: <i>Herbaceuticals Inc. v. Xel Herbaceuticals Inc.</i> , 86 USPQ2d 1572, 1575 n.3 (TTAB 2008); and <i>Hornby v. TJX Companies Inc.</i> , 87 USPQ2d 1411, 1419 (TTAB 2008).
	New case added to Note 9: <i>Green Spot (Thailand) Ltd. v. Vitasoy International Holdings Ltd.</i> , 86 USPQ2d 1283, 1285 (TTAB 2008).
	Updated citation in Note 10 to <i>TBC Corp. v. Grand Prix Ltd.</i> , 12 USPQ2d 1311, 1313-14 (TTAB 1989).
	Added new Note 11, citing: <i>KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.</i> , 543 U.S. 111, 72 USPQ2d 1833 (2004).
	Added new Note 12, citing: <i>Truescents LLC v. Ride Skin Care LLC</i> , 81 USPQ2d 1334, 1338 (TTAB 2006); and <i>Miles Laboratories Inc. v. Naturally Vitamin Supplements Inc.</i> , 1 USPQ2d 1445, 1454 (TTAB 1986).
	In Notes 13, 16 and 18: Amended Fed. R. Civ. P. 8(e)(1) to reflect that it is now Fed. R. Civ. P. 8(d)(1).
	New cases added to Note 14: <i>IdeasOne Inc. v. Nationwide Better Health Inc.</i> , 89 USPQ2d 1952, 1953 (TTAB 2009); <i>H.D. Lee Co. v. Maidenform Inc.</i> , 87 USPQ2d 1715, 1720 (TTAB 2008); <i>Fair Indigo LLC v. Style Conscience</i> , 85 USPQ2d 1536, 1538 (TTAB 2007); <i>Ohio State University v. Ohio University</i> , 51 USPQ2d 1289, 1292 (TTAB 1999); <i>Otto International Inc. v. Otto Kern GmbH</i> , 83 USPQ2d 1861, 1864 (TTAB 2007); and <i>Wet Seal Inc. v. FD Management Inc.</i> , 82

	USPQ2d 1629, 1634 (TTAB 2007).
	New cases added to Note 15: <i>In re Bose Corp.</i> , 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009); <i>Enbridge, Inc. v. Excelerate Energy Limited Partnership</i> , 92 USPQ2d 1537 (TTAB 2009); and <i>Asian and Western Classics B.V. v. Selkow</i> , 92 USPQ2d 1478 (TTAB 2009).
	New cases added to Note 20: <i>Nasalok Coating Corp. v. Nylok Corp.</i> , 522 F.3d 1320, 86 USPQ2d 1369, 1373 n.3 (Fed. Cir. 2008); <i>Textron, Inc. v. The Gillette Company</i> , 180 USPQ 152, 153 (TTAB 1973); and <i>Tea Board of India v. Republic of Tea Inc.</i> , 80 USPQ2d 1881, 1884 n.5 and 12 (TTAB 2006).
311.02(c) Unpleaded Affirmative Defenses	New cases added to Note 1: <i>H.D. Lee Co. v. Maidenform Inc.</i> , 87 USPQ2d 1715, 1720 (TTAB 2008); <i>Diaz v. Servicios De Franquicia Pardo's S.A.C.</i> , 83 USPQ2d 1320, 1322 (TTAB 2007); and <i>Barbara's Bakery Inc. v. Landesman</i> , 82 USPQ2d 1283, 1290 (TTAB 2007).
311.02(d) Other Affirmative Pleadings - Amplifying Denials	Added <i>Morgan Creek Productions Inc. v. Foria International Inc.</i> , 91 USPQ2d 1134, 1136 (TTAB 2009) to Note 1.
311.03 Reply To Answer Should Not Be Filed	Amended quotation from Fed. R. Civ. P. 7(a) to reflect recent changes.
312 Default	Section Heading only.
312.01 In General	Amended, in first paragraph, from 20 days to 30 days defendant's allowed time to show cause why default judgment should not be entered against it; amended example where defendant need not submit answer with response to notice of default to reflect 2007 rules changes that require plaintiff to serve copies of complaint on defendant; and added information for reader regarding stay of parties' obligations to conference and to make initial disclosures where defendant is in default.
	Added new Note 5, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 (August 1, 2007).

	Added new Note 6, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42255 (August 1, 2007).
312.02 Setting Aside Notice Of Default	No substantive changes made.
312.03 Setting Aside Default Judgment	Amended section to indicate that motions seeking relief from judgment under either Fed. R. Civ. P. 55(c) or 60(b) are treated with liberality; updated references to Wright, Miller & Kane from 1998 to 2010; new cases added to Note 6: <i>CTRL Systems Inc. v. Ultraphonics of North America Inc.</i> , 52 USPQ2d 1300, 1303 (TTAB 1999); and <i>Smart Inventions Inc. v. TMB Products LLC</i> , 81 USPQ2d 1383, 1384 (TTAB 2006).
313 Counterclaims	Section Heading only.
313.01 In General	Amended section discussing counterclaims to partially cancel a registration by deleting some of the goods or services therein, by explaining that counterclaimant must allege avoidance of likelihood of confusion unless based on abandonment.
	New cases added to Note 1: <i>Fort James Operating Co. v. Royal Paper Converting Inc.</i> , 83 USPQ2d 1624, 1626 n.1 (TTAB 2007); <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1437 (TTAB 2007); <i>Chicago Bears Football Club, Inc. and NFL Properties LLC v. 12th Man/Tennessee LLC</i> , 83 USPQ2d 1073, 1083 (TTAB 2007); and <i>Tea Board of India v. Republic of Tea Inc.</i> , 80 USPQ2d 1881, 1884 n.5 and n.12 (TTAB 2006).
	Deleted from Note 1: " <i>Clorox Co. v. State Chemical Manufacturing Co.</i> , 197 USPQ 840 (TTAB 1977); and <i>Sealed Air Corp. v. Scott Paper Co.</i> , 190 USPQ 106 (TTAB 1975)."
	New cases added to Note 7: <i>Dak Industries, Inc. v. Daiichi Kosho Co.</i> , 35 USPQ2d 1434, 1437 (TTAB 1995); and <i>Eurostar, Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG</i> , 34 USPQ2d 1266, 1271 n.3 (TTAB 1995).
	Added new Notes 8 and 9, citing: <i>Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co.</i> , 34 USPQ2d 1266, 1271 n.3 (TTAB 1995);

	<i>Montecash LLC v. Anzar Enterprises, Inc.</i> , 95 USPQ2d 1060, 1063 (TTAB 2010); and <i>DAK Industries Inc. v. Daiichi Kosho Co.</i> , 35 USPQ2d 1434, 1437 (TTAB 1995).
313.02 Fee For Counterclaim	New case added to Note 1: <i>Fred Beverages, Inc. v. Fred's Capital Management Company</i> , 605 F.3d 968, 94 USPQ2d 1958 (Fed. Cir. 2010).
313.03 Form And Substance Of Counterclaim; Service Of Counterclaim	Amended to inform readers that counterclaimant must serve copies of its counterclaim on every other party to the proceeding; amended citation in Note 1 from 37 CFR § 2.112(a) to § 2.111(a).
	New cases cited in Note 3: <i>Finanz St. Honore B.V. v. Johnson & Johnson</i> , 85 USPQ2d 1478, 1479 (TTAB 2007); and <i>Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas Inc.</i> , 77 USPQ2d 1492 (TTAB 2005).
	Added parenthetical in Note 4 to citation of <i>UMC Industries, Inc. v. UMC Electronics Co.</i> , 207 USPQ 861, 862 n.3 (TTAB 1980).
313.04 Compulsory Counterclaims	Amended Note 1 to inform readers that Fed. R. Civ. P. 13(f) has been abrogated.
	New cases added to Note 3: <i>Zanella Ltd. v. Nordstrom Inc.</i> , 90 USPQ2d 1758 (TTAB 2008); and <i>Turbo Sportswear Inc. v. Marmot Mountain Ltd.</i> , 77 USPQ2d 1152, 1155 (TTAB 2005).
	Deleted from Note 3: “ <i>Beth A. Chapman, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302 (1991).”
313.05 Permissive Counterclaims	Amended to indicate when counterclaim receives filing date.
313.06 Answer To Counterclaim	Amended discussion of required elements for counterclaim to include proof of service; changed TBMP § 310.01 to § 311.01 to correct typographical error.
314 Unpleaded Matters	Expanded discussion of 37 CFR § 2.107; added reference to TBMP § 315.
	New cases added to Note 1: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 n.3 (TTAB 2009); <i>Hornby v. TJX Companies Inc.</i> , 87 USPQ2d 1411, 1415 (TTAB 2008); and <i>Kohler Co. v. Baldwin</i>

	<i>Hardware Corp.</i> , 82 USPQ2d 1100, 1103 n.3 (TTAB 2007). Changed order of cases to list in descending date order.
	Deleted from Note 1: “See also <i>Reflange Inc. v. R-Con International</i> , 17 USPQ2d 1125, 1128 (TTAB 1990); <i>United States Shoe Corp. v. Kiddie Kobbler Ltd.</i> , 231 USPQ 815 (TTAB 1986); <i>Giant Food, Inc. v. Standard Terry Mills, Inc.</i> , 229 USPQ 955 (TTAB 1986); <i>Alliance Manufacturing Co. v. ABH Diversified Products, Inc.</i> , 226 USPQ 348 (TTAB 1985); <i>Long John Silver's, Inc. v. Lou Scharf Inc.</i> , 213 USPQ 263 (TTAB 1982); <i>Standard Brands Inc. v. Peters</i> , 191 USPQ 168 (TTAB 1975); <i>Dap, Inc. v. Litton Industries, Inc.</i> , 185 USPQ 177 (TTAB 1975); and <i>CCI Corp. v. Continental Communications, Inc.</i> , 184 USPQ 445 (TTAB 1974). Cf. <i>The Hoover Co. v. Royal Appliance Mfg. Co.</i> , 238 F.3d 1357, 57 USPQ2d 1720, 1723 (Fed. Cir. 2001) (unpleaded issue will not be addressed for the first time on appeal).”
	Deleted from Note 3: “See also <i>Trans Union Corp. v. Trans Leasing International, Inc.</i> , 200 USPQ 748 (TTAB 1978); <i>United States Mineral Products Co. v. GAF Corp.</i> , 197 USPQ 301 (TTAB 1977); <i>Copperweld Corp. v. Astralloy-Vulcan Corp.</i> , 196 USPQ 585 (TTAB 1977); <i>Hershey Foods Corp. v. Cerreta</i> , 195 USPQ 246 (TTAB 1977); and <i>Taffy's of Cleveland, Inc. v. Taffy's, Inc.</i> , 189 USPQ 154 (TTAB 1975).”
	New case added to Note 4: <i>Sportswear Inc. v. Marmot Mountain Ltd.</i> , 77 USPQ2d 1152, 1155 (TTAB 2005).
	Added new Note 5, citing: <i>American Express Marketing & Development Corp. v. Gilad Development Corp.</i> , 94 USPQ2d 1294, 1296 (TTAB 2010); and <i>Consolidated Foods Corporation v. Berkshire Handkerchief Co., Inc.</i> , 229 USPQ 619, 621 (TTAB 1986).
	New cases added to Note 6: <i>American Express Marketing & Development Corp. v. Gilad Development Corp.</i> , 94 USPQ2d 1294, 1297 (TTAB 2010); <i>Karsten Manufacturing Corp. v. Editoy AG</i> , 79 USPQ2d 1783, 1785-

	1786 (TTAB 2006); <i>Societe des Produits Marnier Lapostolle v. Distillerie Moccia S.R.L.</i> , 10 USPQ2d 1241, 1242 n.4 (TTAB 1989); <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1437 (TTAB 2007); and <i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629, 1634 (TTAB 2007).
	Added new Note 7, citing: <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1045 (TTAB 2009).
	Added new Note 8, citing: <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1045 n.12 (TTAB 2009); <i>Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha</i> , 77 USPQ2d 1917, 1920 (TTAB 2006); <i>DC Comics v. Pan American Grain Mfg. Co.</i> , 77 USPQ2d 1220, 1223 n.6 (TTAB 2005); and <i>M & T Chemicals Inc. v. Stepan Chemical Co.</i> , 150 USPQ 570, 571 (TTAB 1966).
315 Amendment Of Pleadings	Amended to indicate that an additional claimed registration cannot be added to a previously stated Trademark Act § 2(d) ground and that once an opposition is filed it may not be amended to add to the goods or services subject to opposition; added new Note 3, citing: 37 CFR §§ 2.107(a) and (b); <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1436 (TTAB 2007).
	Added cross-reference to Fed. R. Civ. P. 15 and TBMP § 507.
	New citation added to Note 1: Fed. R. Civ. P. 15(a). Deleted from Note 1: " <i>Beth A. Chapman, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302 (1991)."
	Updated references to Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act in Notes 2 and 4.
316 Motions Relating To Pleadings	No changes made.
317 Exhibits To Pleadings	Amended references to 37 CFR §§ 2.122(c) and (d) to reflect rules changes; amended first paragraph to indicate that there are two exceptions to rule that exhibits are not evidence; amended paragraph 3 to describe first exception; added new paragraph 4 to

	explain second exception. Included cross-references to TBMP §§ 704.03(b)(1)(A) and 704.05(a) and TMEP § 504.
	New case added to Note 1: <i>Baseball America Inc. v. Powerplay Sports Ltd.</i> , 71 USPQ2d 1844, 1846 n.6 (TTAB 2004).
	Added new Note 2, citing: <i>Equine Touch Foundation Inc. v. Equinology Inc.</i> , 91 USPQ2d 1943, 1945 (TTAB 2009); and <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1530 (TTAB 2008).
	Added new Note 4, citing: <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1530 n.4 (TTAB 2008).
	Added new Note 5, citing: <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1046 (TTAB 2009); and <i>Black & Decker Corp. v. Emerson Electric Co.</i> , 84 USPQ2d 1482, 1485 n.4 (TTAB 2007).
318 Fed. R. Civ. P. 11 Applicable	Amended reference to Fed. R. Civ. P. 11 to reflect recent changes.
319 Amendment To Allege Use; Statement Of Use	No changes.

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 400**

TBMP SECTION

NATURE OF CHANGE

401 Introduction To Disclosures And Discovery (new title)	Updated title from "In General" to "Introduction To Disclosures And Discovery."
	Added reference to 37 CFR § 2.120(a)(1).
	Amended first paragraph to note use of discovery may further parties' entry into stipulations or ACR determinations.
	Amended second paragraph to indicate that Federal Rules relating to automatic disclosures and discovery conferences do not apply to cases filed before November 1, 2007 but do apply in a modified form to cases commenced after such date; deleted listing of Federal Rules that do not apply to Board proceedings.
	Added new paragraph 3 to inform reader of parties' obligations to conduct discovery conference and to make disclosures; of the purpose such obligations are required; and of presumption that parties are following regime in absence of contrary statement filed with the Board.
	New case added to Note 1: <i>Eveready Battery Co., Inc. v. Green Planet, Inc.</i> 91 USPQ2d 1511, 1513 (TTAB 2009).
	Deleted reference to 37 CFR § 2.120(a) from Note 2 and added: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242 (August 1, 2007).
	Deleted previous Note 3, reading as follows: "See "Effect of December 1, 1993 Amendments to the Federal Rules of Civil Procedure on Trademark Trial and Appeal Board Inter Partes Proceedings," 1159 TMOG 14 (February 1, 1994). See also, for example, <i>Harjo v. Pro-Football, Inc.</i> , 50 USPQ2d 1705, 1715 (TTAB 1999) (petitioners need not prepare list of trial witnesses and documents), rev'd on other grounds, 284 F. Supp. 2d 96, 68 USPQ2d 1225 (D.D.C. 2003)."
	Added new Note 3, citing: Miscellaneous Changes to Trademark Trial and Appeal Board

	Rules, 72 Fed. Reg. 42242, 42244-7 (August 1, 2007); 37 CFR § 2.120; Fed. R. Civ. P. 26(a)(1)(A); Fed. R. Civ. P. 26(a)(1)(B); Fed. R. Civ. P. 26(a)(3); Fed. R. Civ. P. 26(a)(2); Fed. R. Civ. P. 26(f).
	Deleted Note 4, reading as follows: “ <i>Yamaha International Corp. v. Hoshino Gakki Co.</i> , 840 F.2d 1572, 6 USPQ2d 1001, 1004 (Fed. Cir. 1988) (USPTO rules governing procedure in inter partes proceedings are adapted from the Federal Rules with modifications appropriate to the administrative process).”
	Added new Notes 4 and 5, each citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244 and 42246 (August 1, 2007).
	Added new Note 6, citing: <i>See Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767-8 (TTAB 2008)
401.01 Discovery Conferences (new section)	This is a new section, referencing 37 CFR §§ 2.120(a)(1) and (2) and Fed. R. Civ. P. 26(f)(2), describing procedures for conducting discovery conferences; topics to be discussed; and timing of conference; and citing, in the Notes, to the Miscellaneous Changes to Trademark Trial and Appeal Board Rules of August 1, 2007; <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759 (TTAB 2009) and <i>Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767, n.1 (TTAB 2008).
401.02 Initial Disclosures (new section)	This is a new section, referencing 37 CFR §§ 2.120(a)(2) and (3) and Fed. R. Civ. P. 26(a)(1); describing parties’ mutual obligation to make initial disclosures; procedures for making disclosures; information to include in disclosures; and treatment of disclosures during trial; and citing, in the Notes, to 37 CFR § 2.210, Fed. R. Civ. P. 26; Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242 (August 1, 2007); and the following cases: <i>Amazon Technologies, Inc. v. Jeffrey S. Max</i> , 93 USPQ2d 1702 (TTAB 2009); <i>Influence Inc. v. Zuker</i> , 88 USPQ2d 1859, 1861 (TTAB 2008); <i>Jules Jurgensen/Rhapsody Inc. v. Baumberger</i> , 91 USPQ2d 1443, 1444 n.1

	(TTAB 2009); by comparison, <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1175 (TTAB 2010); and <i>Qualcomm, Inc. v. FLO Corp.</i> , 93 USPQ2d 1768, 1769-70 (TTAB 2010).
401.03 Expert Disclosures (new section)	This is a new section, referencing 37 CFR § 2.120(a)(2) and Fed. R. Civ. P. 26(a)(2); describing procedures and substance for expert disclosures; and citing, in the Notes, 37 CFR § 2.120(a); Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242 (August 1, 2007); and <i>Jules Jurgenson/Rhapsody, Inc. v. Peter Baumberger</i> , 91 USPQ2d 1443 (TTAB 2009).
401.04 Modification Of Disclosure Obligations (new section)	This is a new section, referencing 37 CFR § 2.120(a)(2); describing procedures for modifying disclosure deadlines and obligations; when obligations will be stayed; and enforcement thereof; and citing, in the Notes, 37 CFR § 2.120; the Miscellaneous Changes to Trademark Trial and Appeal Board Rules of August 1, 2007; <i>Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767-8 (TTAB 2008); <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759, 1760 n.2 (TTAB 2009); and <i>Influence Inc. v. Zuker</i> , 88 USPQ2d 1859 (TTAB 2008).
401.05 Form Of Disclosures (new section)	This is a new section, referencing Fed. R. Civ. P. 26(a)(4); and (g)(1); describing formatting disclosures and signature requirements; and citing, in the Notes, Fed. R. Civ. P. 26 and <i>Influence Inc. v. Zuker</i> , 88 USPQ2d 1859, 1861 (TTAB 2008).
401.06 Other Requirements Under The Board's Disclosure Regime (new section)	This is a new section, informing the reader that service of initial disclosures is prerequisite to service of discovery of filing of motion for summary judgment or to compel; cross-referencing TBMP sections where reader may obtain further information on other requirements under disclosure regime; and citing, in the Notes, 37 CFR §§ 2.120 and 2.127, Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244-7 (August 1, 2007); <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759 (TTAB 2009); <i>Qualcomm, Inc. v. FLO Corp.</i> , 93 USPQ2d 1768, 1769-70 (TTAB 2010);

	<i>Compagnie Gervais Danone v. Precision Formulations LLC</i> , 89 USPQ2d 1251, 1255-56 (TTAB 2009); <i>Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767-8 (TTAB 2008); and <i>Dating DNA, LLC v. Imagini Holdings, LLC</i> , 94 USPQ2d 1889 (TTAB 2010).
402 Scope Of Discovery	Section Heading only.
402.01 In General	Added references to Fed. R. Civ. P. 26(b)(1) and 26(g); amended paragraph 2 to warn parties not to engage in fishing expedition and that guidelines for discovery apply to discovery in electronic form.
	Amended paragraph 3 to remind parties they are free to agree to limit scope of discovery.
	Added parenthetical to <i>Johnston Pump/General Valve Inc. v. Chromalloy American Corp.</i> , 10 USPQ2d 1671, 1675 (TTAB 1988) in Note 1; to <i>Neville Chemical Co. v. Lubrizol Corp.</i> , 183 USPQ 184, 187 (TTAB 1974) in Note 2 and to <i>Luehrmann v. Kwik Kopy Corp.</i> , 2 USPQ2d 1303, 1305 (TTAB 1987) in Note 7.
	Added new Note 5, citing 37 § CFR 2.120(a)(2).
	Amended parenthetical to <i>Sentrol, Inc. v. Sentex Systems, Inc.</i> , 231 USPQ 666, 667 (TTAB 1986) in Note 8.
402.02 Limitations On Right To Discovery And On Electronically Stored Information	Updated Heading; added reference to Fed. R. Civ. P. 26(b)(2)(A) and (B).
	Amended paragraph 4 to indicate that discovery of confidential information is subject to terms of Board's standard protective order; and added new paragraph 7 regarding discovery of electronically-stored information.
	Amended Note 4 to advise reader of application of Board's standard protective order.
	Added new cases to Note 5: <i>In re Seagate Technology LLC</i> , 497 F.3d 1360, 83 USPQ2d 1865, 1873 (Fed. Cir. 2007); and <i>Genentech Inc. v. U.S. International Trade Commission</i> , 122 F.3d 1409, 43 USPQ2d 1722, 1728 (Fed. Cir. 1997).
	Added new case to Note 6: <i>In re Seagate</i>

	<i>Technology LLC</i> , 497 F.3d 1360, 83 USPQ2d 1865, 1874 (Fed. Cir. 2007)
	Added new Notes 7-9, citing: Fed. R. Civ. P. 26(b)(2)(B); added new Note 10, citing: Fed. R. Civ. P. 26(b)(2)(B) and (C).
403 Timing Of Discovery	Section Heading only.
403.01 In General	Amended references to 37 CFR § 2.120(a).
	Amended first paragraph to include information on opening of discovery for cases commenced on or after November 1, 2007; added new second paragraph to inform reader of available modifications to discovery and trial obligations and scheduling. Also added information regarding obligation of party served with discovery prior to service of initial disclosures.
	Added reference to Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242 (August 1, 2007) in Note 2.
	Added new Notes 3 and 4, citing: 37 CFR § 2.120(a)(2) and <i>Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767-8 (TTAB 2008).
	Added new Note 5, citing: 37 CFR § 2.120(a)(2) and <i>H.D. Lee Co. v. Maidenform, Inc.</i> , 87 USPQ2d 1715, 1720 n.55 (TTAB 2008).
	Added new Note 7, citing: <i>Dating DNA, LLC v. Imagini Holdings, LLC</i> , 94 USPQ2d 1889 (TTAB 2010); and <i>Amazon Technologies v. Wax</i> , 93 USPQ2d 1702 (TTAB 2009).
403.02 Time For Service Of Discovery Requests And Taking Of Depositions (new title)	Amended by deleting statement that discovery may be served from the day the discovery period opens, added explanation that discovery may not be served until after initial disclosures are served
	Added reference to 37 CFR § 2.120(a)(3) in Note 1; added new case to Note 1: <i>Dating DNA, LLC v. Imagini Holdings, LLC</i> , 94 USPQ2d 1889 (TTAB 2010); and noted that cases cited in Note 1 from earlier version of manual commenced prior to November 1, 2007.
	Added new Note 2, citing: 37 CFR § 2.120(a)(3).
	Added new case to Note 3: <i>National Football League v. DNH Management LLC</i> , 85 USPQ2d

	1852 (TTAB 2008).
403.03 Time For Service Of Discovery Responses	Updated reference of 37 CFR § 2.120 from 37 CFR § 2.120(a) to 37 CFR § 2.120(a)(3) and amended reference to conform to rules changes.
	Amended first paragraph to inform reader that 5-day grace period does not apply to service by facsimile or e-mail; and deleted statement that timely responses to discovery may be served after close thereof without forfeit of right to object from first paragraph; added new paragraph 3 addressing party's right to object to discovery served late in the discovery period.
	Amended second paragraph to explain sequence of discovery and to encourage early initiation of discovery.
	Amended paragraph 4 to clarify that motion to compel applies to failure to respond to interrogatories or document requests, and refers reader to TBMP § 407 for further information regarding requests for admissions.
	Added new cases to Note 1: <i>Amazon Technologies v. Wax</i> , 93 USPQ2d 1702, 1705 (TTAB 2009); and <i>MySpace Inc. v. Donnell Mitchell</i> , 91 USPQ2d 1060, 1061 n.2 (TTAB 2009).
	Added new Note 5, citing: <i>Dating DNA, LLC v. Imagini Holdings, Ltd.</i> , 94 USPQ2d 1889 (TTAB 2010) and <i>H.D. Lee Co. v. Maidenform, Inc.</i> , 87 USPQ2d 1715, 1720 n.13 (TTAB 2008).
	Added new Note 7, citing: <i>Giersch v. Scripps Networks, Inc.</i> , 85 USPQ2d 1306 (TTAB 2007); and <i>Hobie Designs, Inc. v. Fred Hayman Beverly Hills, Inc.</i> , 14 USPQ2d 2064 (TTAB 1990).
403.04 Extensions Of Discovery Period, Time To Respond To Discovery Requests And Disclosures (new title)	Updated title from prior title: "Extensions Of Discovery Period, And/Or Time To Respond To Discovery Requests"
	Updated reference to 37 CFR § 2.120(a) to include (a)(2) and (a)(3).
	Amended references to 37 CFR §§ 2.121(a) and (d) to conform to rules changes.

	Amended first paragraph to include information about resetting dates upon extension of discovery period.
	Amended paragraph 2 to include statement that where party waits to serve discovery near the end of the period, good cause may not be found.
	Amended paragraph 4 to clarify that extension of party's time to respond to discovery request does not automatically result in extension of deadlines for disclosures, discovery, or trial.
	Amended paragraph 5 to provide example of when a stipulation to extend party's time to respond to discovery should be filed with Board.
	Added new paragraph 6 to explain difference in procedure between request to extend time to make initial disclosures and request to extend time to make expert disclosures.
	Added new paragraph 7 cross-referencing TBMP § 401.04.
	Added new case to Note 3: <i>National Football League v. DNH Management LLC</i> , 85 USPQ2d 1852 (TTAB 2008); and deleted "Janet E. Rice, <i>TIPS FROM THE TTAB: The Timing of Discovery</i> , 68 Trademark Rep. 581 (1978)" from Note 3.
	Added new Note 7, referencing: Fed. R. Civ. P. 29(b); and citing <i>Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767, n.2 (TTAB 2008).
403.05 Need For Early Initiation Of Discovery	Section Heading only.
403.05(a) To Allow Time for "Follow-up" Discovery	No substantive changes.
403.05(b) To Facilitate Introduction of Produced Documents	Updated reference to 37 CFR § 2.120(j)(3)(ii) to reflect rules changes.
	Amended first paragraph to inform reader that most straightforward way to introduce documents by notice of reliance that are not otherwise eligible is by stipulation of the parties; amended second paragraph to inform reader that party may request admission of genuineness of documents produced through disclosures as well as through a request for

	production of documents.
	Added new Note 1, citing: <i>ProQuest Information and Learning Co. v. Island</i> , 83 USPQ2d 1351 (TTAB 2007); and <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100 (TTAB 2007).
404 Discovery Depositions	Section Heading only.
404.01 When Permitted And By Whom (new title)	Updated section title from “When and By Whom Taken”
	Added new second paragraph, explaining that parties should schedule depositions by agreement to avoid conflicts.
	Added new case to Note 1: <i>National Football League v. DNH Management LLC</i> , 85 USPQ2d 1852, 1855 (TTAB 2008).
	Added new Note 2, citing: <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1654 (TTAB 2007); and <i>Luehrmann v. Kwik Kopy Corp.</i> , 2 USPQ2d 1303, 1304 (TTAB 1987).
404.02 Who May Be Deposed	Updated reference to Fed. R. Civ. P. 30(a); clarified that limit of ten depositions refers to discovery depositions; and added new paragraph regarding deposition of nonparty witness.
404.03 Place Of Deposition; Oral Or Written Deposition; Securing Attendance Of Deponent	Section Heading only.
404.03(a) Person Residing in the United States – In General	Deleted reference to Fed. R. Civ. P. 26(a)(5) from Note 2.
404.03(a)(1) Person Residing in United States – Party	Amended first paragraph to add comment that proposed deponent who fails to appear for a noticed deposition may be subject to motion to compel.
	Deleted “Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296-297 (1985)” from Note 1.
404.03(a)(2) Person Residing in United States – Nonparty	Amended third paragraph to clarify that Board has no jurisdiction to enforce subpoena.
	Added new references to Fed. R. Civ. P. 30(a)(1) and Fed. R. Civ. P. 45 in Note 2; and deleted “Saul Lefkowitz and Janet E. Rice,

	<i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 383-384 (1985); Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296 (1985)” from Note 2.
	Deleted “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 383-384 (1985); and Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296 (1985)” from Note 4.
404.03(b) Person Residing in a Foreign Country – Party	Amended first paragraph to advise reader to consult with foreign local counsel or the Department of State to determine procedure for taking deposition in foreign country; amended third paragraph to cross-reference reader to TBMP § 703.01(g) for information on letter rogatory procedure under Hague convention.
	Added new paragraph 3 regarding discovery deposition of natural person in foreign country.
	Deleted from Note 1: “the testimony deposition of an adverse party, unless obtained voluntarily, may be taken in a foreign country, if at all, only by the letter rogatory procedure or by procedures provided under the Hague Convention or other applicable treaties.”
	Deleted from Note 2: “ <i>Fischer Gesellschaft m.b.H. v. Molnar and Company, Inc.</i> , 203 USPQ 861, 866 (TTAB 1979) (by motion);” and “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 384 (1985); Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296 (1985); and Janet E. Rice, <i>TIPS FROM THE TTAB: Recent Changes in the TTAB Discovery Rules</i> , 74 Trademark Rep. 449 (1984).”
	Added, by comparison, <i>Rosenruist-Gestao E Servicos LDA v. Virgin Enterprises, Ltd</i> , 511 F.3d 437, 85 USPQ2d 1385 (4th Cir. 2007) to Note 3, and deleted “Louise E. Fruge, <i>TIPS</i>

	<i>FROM THE TTAB: Depositions Upon Written Questions</i> , 70 Trademark Rep. 253 (1980); and <i>Jonergin Co. Inc. v. Jonergin Vermont Inc.</i> , 222 USPQ 337, 340 (Comm'r 1983)" from Note 3.
	Added new Note 4, citing, by comparison: <i>Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers</i> , 357 U.S. 197 (1958).
	Added new Note 5, citing, by comparison: <i>Cochran Consulting Inc. v. Uwatec USA Inc.</i> , 102 F.3d 1224, 41 USPQ2d 1161 (Fed. Cir. 1996).
404.03(c) Person Residing in a Foreign Country – Nonparty	Section Heading only.
404.03(c)(1) Willing Nonparty	Added information regarding protocol in foreign countries for taking depositions and to advise reader to consult with foreign local counsel or the Department of State to determine procedure for taking deposition in foreign country.
404.03(c)(2) Unwilling Nonparty -- The Hague Convention and Letter Rogatory Procedure (new title)	Added reference to 28 U.S.C. 1781; added citation from Black's Law Dictionary to define "letter rogatory" or "letter of request"; added address for U.S. Department of State's web site.
	Amended paragraph 9 to inform reader that letter rogatory is facilitated by any information requesting party is able to provide to the Board.
	Deleted from Note 1: "See, in general, Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296 (1985)."
	Deleted Note 6, citing: Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296, 299 (1985), and deleted reference to same from Note 8.
404.03(d) Foreign Person Present Within the United States – Party	Deleted Note 1, citing: Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323 (1985); Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296 (1985); and

	Janet E. Rice, <i>TIPS FROM THE TTAB: Recent Changes in the TTAB Discovery Rules</i> , 74 Trademark Rep. 449 (1984).
404.03(e) Foreign Person Present Within the United States – Nonparty	No changes.
404.04 Persons Before Whom Depositions May Be Taken	Updated references to Fed. R. Civ. P. 28 to reflect changes.
404.05 Notice Of Deposition	Updated references to Fed. R. Civ. P. 30 to reflect changes.
	Amended second paragraph to clarify that whether notice is reasonable is evaluated on a case-by-case basis and that the closing of a party's discovery period does not excuse failure to provide due notice.
	Amended paragraph 3 to provide additional information regarding production of documents at a deposition.
	Added new case to Note 2: <i>Gaudreau v. American Promotional Events Inc.</i> , 82 USPQ2d 1692, 1696 (TTAB 2007).
	Added new Note 4, citing: <i>Gaudreau v. American Promotional Events Inc.</i> , 82 USPQ2d 1692, 1696 (TTAB 2007).
	Added new Note 5, citing: Fed. R. Civ. P. 30(b)(2).
	Added new Note 6, citing: Fed. R. Civ. P. 30(b), Advisory Committee's notes, (1970 amendment).
	Added new Note 7, citing: Fed. R. Civ. P. 34(b)(2)(A).
	Added new Note 8, citing: <i>National Football League v. DNH Management LLC</i> , 85 USPQ2d 1852, 1855 (TTAB 2008).
	Deleted "See Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 383 (1985)" from Note 9.
404.06 Taking A Discovery Deposition	Added reference to Fed. R. Civ. P. 30(b)(4); amended paragraph 3 to inform reader that deposition may be taken by other remote means such as video conferencing, and that any deposition taken by video must be transcribed to be submitted as evidence.
	Amended Note 2 to update reference to Fed.

	R. Civ. P. 30(b)(4); and to add citation to <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1654 (TTAB 2007).
404.06(a) Fed. R. Civ. P. 30(b)(1) Deposition of a Natural Person (new section)	This is a new section, referencing Fed. R. Civ. P. 30(b)(1) and describing the difference between depositions taken of a natural person in individual capacity and as corporate representative.
	Added new Note 1, citing: 8A C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE: Civil 3d § 2103 (2009).
	Added new Note 2, referencing: Fed. R. Civ. P. 30(b)(6) and citing: <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America Inc.</i> , 74 USPQ2d 1672 (TTAB 2005).
404.06(b) Fed. R. Civ. P. 30(b)(6) Deposition of a Corporation, Organization, Partnership, Association or Other Juristic Person (new section)	This is a new section, referencing Fed. R. Civ. P. 30(b)(6) and describing depositions taken of corporate representatives, including compelling attendance at deposition and available sanctions for failure to attend or answer questions on behalf of organization.
	Added new Note 1, citing: 8A C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE: Civil 3d § 2103 (2009).
	Added new Note 2, citing: Fed. R. Civ. P. 30(b)(6); 8A C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE: Civil 3d § 2103 (2009).
	Added new Note 3, citing: Fed. R. Civ. P. 30(b)(6).
	Added new Note 4, citing: <i>Kellogg Co. v. New Generation Foods Inc.</i> , 6 USPQ2d 2045, 2049 n.5 (TTAB 1988); and <i>Mattel Inc. v. Walking Mountain Productions</i> , 353 F3d 792, 69 USPQ2d 1257, 1260 n.4 (9th Cir. 2003).
	Added new Note 5, citing: <i>A&E Products Group L.P. v. Mainetti USA Inc.</i> , 70 USPQ2d 1080, 1086 (S.D.N.Y. 2004).
	Added new Note 6, citing: <i>International Finance Corp. v. Bravo Co.</i> , 64 USPQ2d 1597, 1605 (TTAB 2002).
	Added new Note 7, citing: <i>International Finance Corp. v. Bravo Co.</i> , 64 USPQ2d 1597, 1605 (TTAB 2002).
	Added new Note 8, citing: Fed. R. Civ. P. 30(b)(6).

	Added new Note 9, citing: <i>United Technologies Motor Systems Inc. v. Borg-Warner Automotive Inc.</i> , 50 USPQ2d 1060, 1062 (E.D. Mich. 1998).
	Added new Note 10, citing: <i>United Technologies Motor Systems Inc. v. Borg-Warner Automotive Inc.</i> , 50 USPQ2d 1060, 1062 (E.D. Mich. 1998); and <i>Tulip Computers International B.V. v. Dell Computer Corp.</i> , 63 USPQ2d 1527 (D. Del. 2002).
	Added new Note 11, referencing: 37 CFR § 2.120(e); and citing: <i>United Technologies Motor Systems Inc. v. Borg-Warner Automotive Inc.</i> , 50 USPQ2d 1060 (E.D. Mich. 1998); and <i>S. Industries Inc. v. Lamb-Weston Inc.</i> , 45 USPQ2d 1293 (TTAB 1997).
	Added new Note 12, citing: 37 CFR § 2.120(g).
	Added new Note 13, citing: <i>United Technologies Motor Systems Inc. v. Borg-Warner Automotive Inc.</i> , 50 USPQ2d 1060, 1061 (E.D. Mich. 1998).
	Added new Note 14, citing: Fed. R. Civ. P. 30(b)(6) Advisory Committee's notes, (1993 amendment).
	Added new Note 15, citing: Fed. R. Civ. P. 30(d) Advisory Committee's notes, (2000 amendment).
	Added new Note 16, citing: <i>Foster-Miller Inc. v. Babcock & Wilcox Canada</i> , 210 F.3d 1, 54 USPQ2d 1193 (1st Cir. 2000).
404.06(c) Time for Deposition (new section)	This is a new section, referencing Fed. R. Civ. P. 30(d)(1) and describing presumptive time of 1 day, 7 hours for deposition and exceptions.
	Added new Notes 1-8, referencing: Fed. R. Civ. P. 30(d) Advisory Committee's notes, (2000 amendment).
	Also cited <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America Inc.</i> , 74 USPQ2d 1672 (TTAB 2005) in Note 8.
404.06(d) Re-Deposing Witness (new section)	This is a new section, referencing Fed. R. Civ. P. 30(a)(2)(A) and describing circumstances under which more than one deposition may be taken of a witness.
	Added new Notes 1 and 2, referencing: Fed. R. Civ. P. 30(a)(2)(A)(ii).

	Added new Note 3, referencing: Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii) and citing: <i>International Finance Corp. v. Bravo Co.</i> , 64 USPQ2d 1597 (TTAB 2002).
	Added new Note 4, referencing: Fed. R. Civ. P. 30(a)(2)(A)(ii) Advisory Committee's notes, (1993 amendment); and citing, by comparison, <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America Inc.</i> , 74 USPQ2d 1672 (TTAB 2005).
	Added new Note 5, referencing: Fed. R. Civ. P. 30(a)(2)(A)(ii) Advisory Committee's notes, (1993 amendment).
404.07 Discovery Depositions On Written Questions	No changes.
404.07(a) Depositions on Written Questions: Before Whom Taken	No substantive changes.
404.07(b) Depositions on Written Questions: When Taken	Updated reference to 37 CFR § 2.120(a)(3) to reflect rules changes
	Added text to inform reader that Board has discretion to suspend other discovery activities pending taking of deposition on written questions.
404.07(c) Depositions on Written Questions: Place of Deposition	No changes.
404.07(d) Depositions on Written Questions: Notice of Deposition	No substantive changes. Added new Note 3, citing: 37 CFR § 2.124(d)(1).
404.07(e) Depositions on Written Questions: Examination of Witness	No changes.
404.07(f) Depositions on Written Questions: Objections	Amended second paragraph to advise reader that objections may be considered waived if not maintained in a brief at final hearing and that Board should be apprised by objecting party of any objections that are resolved prior to final decision.
404.07(g) Depositions on Written Questions: Form of Deposition; Signature	No changes.
404.07(h) Depositions on Written Questions:	No substantive changes.

Certification of Deposition	
404.07(i) Depositions on Written Questions: Service, Correction, and Making the Deposition of Record	No substantive changes.
404.07(j) Deposition on Written Questions: Utility	Deleted “Louise E. Fruge, <i>TIPS FROM THE TTAB: Depositions Upon Written Questions</i> , 70 Trademark Rep. 253, 253 (1980)” and “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 397 (1985)” from Note 1.
404.08 Discovery Deposition Objections	Added text to this section heading to explain types of objections that may be made to the taking of a discovery deposition. Added new Notes 1 and 2, citing: Fed. R. Civ. P. 30 and 32.
404.08(a) Objections to Notice	Added new case to Note 1 (by comparison): <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648 (TTAB 2007).
404.08(b) Objections as to Disqualification of Officer	No changes made.
404.08(c) Objections During Deposition	Added reference to Fed. R. Civ. P. 30(c)(2) and amended references to Fed. R. Civ. P. 32 to reflect rules changes.
	Amended fourth paragraph to clarify that objections should be limited to those permitted under Fed. R. Civ. P. 32(d)(3) and should be made concisely in a nonargumentative manner. Further amended paragraph to indicate that witness need not reveal any information subject to Board’s standard protective order.
	Added new Note 3, citing: Fed. R. Civ. P. 30(c)(2).; added new Note 4, citing: Fed. R. Civ. P. 30(d) and Fed. R. Civ. P. 30(d) Advisory Committee’s notes (1993 amendment).
	Added new reference to Note 5: 37 CFR § 2.116(g); Updated reference to “C. WRIGHT, A. MILLER & R. MARCUS, <i>FEDERAL PRACTICE AND PROCEDURE Civil 3d</i> § 2213 (2009)” from “C. WRIGHT, A. MILLER & R. MARCUS, <i>FEDERAL PRACTICE AND PROCEDURE Civil 2d</i> § 2213 (2d ed. 1994)” in Note 5.
	Added new cases to Note 6 (by comparison):

	<i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629 (TTAB 2007); and <i>Starbucks U.S. Brands LLC v. Ruben</i> , 78 USPQ2d 1741 (TTAB 2006).
	Amended parenthetical to <i>Neville Chemical Co. v. Lubrizol Corp.</i> , 183 USPQ 184, 189 (TTAB 1974) in Note 7.
404.09 Discovery Depositions Compared To Testimony Depositions	Amended paragraph 4 to clarify that party taking deposition under subpoena from federal district court may obtain immediate ruling from court as to propriety of question posed; and that witness need not reveal any information subject to Board's standard protective order.
	Amended reference in Note 1 from "Fed. R. Civ. P. 26(a)" to Fed. R. Civ. P. 30; added new reference to Fed. R. Civ. P. 31 in Note 1.
	Added new case to Note 2: <i>Bison Corporation v. Perfecta Chemie B.V.</i> , 4 USPQ2d 1718 (TTAB 1987).
	Updated reference in Note 4 from "37 CFR § 2.121(a)(1)" to 37 CFR § 2.121(a).
	Updated reference in Note 7 from "Fed. R. Civ. P. 37 (a)(2)(B)" to Fed. R. Civ. P. 37 (a)(3)(B); and updated reference to "C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE Civil 3d § 2213 (2009)" from "C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE Civil 2d § 2213 (2d ed. 1994)".
	Deleted from Note 8: "See also <i>S. Rudofker's Sons, Inc. v. "42" Products, Ltd.</i> , 161 USPQ 499 (TTAB 1969); and <i>Bordenkircher v. Solis Entrialgo y Cia, S. A.</i> , 100 USPQ 268, 276-278 (Comm'r 1953)."
	Added new cases to Note 12: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859 (TTAB 2009); <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i> , 89 USPQ2d 1844, 1847 n.5 (TTAB 2008); <i>Parfums de Coeur Ltd. v. Lazarus</i> , 83 USPQ2d 1012 (TTAB 2007); and, in contradiction, <i>Maids to Order of Ohio Inc. v. Maid-to-Order Inc.</i> , 78 USPQ2d 1899 (TTAB 2006).
	Deleted from Notes 13 and 15: Gary Krugman, <i>TIPS FROM THE TTAB: Testimony Depositions</i> , 70 Trademark Rep. 353 (1980).

405 Interrogatories	Section Heading only.
405.01 When Permitted And By Whom (new title)	Changed title from “When and By Whom Served”
	Added text to inform reader that interrogatories may only be served after or together with service of initial disclosures; that answers may be served after the close of discovery; and that interrogatories may not be served on a nonparty.
	Added new Note 1, citing: 37 CFR § 2.120(a)(3); and added new Note 2, citing: Fed. R. Civ. P. 33 and 37 CFR § 120(d)(1).
405.02 Scope	Added reference to Fed. R. Civ. P. 33(a)(2) to Note 2; and deleted Fed. R. Civ. P. 33(b) from Note 2.
405.03 Limit On Number	Section Heading only.
405.03(a) Description of Limit	Amended reference to 37 CFR § 2.120(d)(1) to reflect rules changes; added text to inform reader that parties may stipulate to reduce number of interrogatories; and added new Note 1, citing: <i>Baron Phillippe De Rothschild S.A. v. S. Rothschild & Co.</i> , 16 USPQ2d 1466, 1467 n.5 (TTAB 1990).
405.03(b) Application of Limit: Sets of Interrogatories	Deleted “Carla Calcagno, <i>TIPS FROM THE TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)</i> , 80 Trademark Rep. 285 (1990)” from Note 1.
405.03(c) Application of Limit: Multiple Marks, Etc.	Deleted “Carla Calcagno, <i>TIPS FROM THE TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)</i> , 80 Trademark Rep. 285 (1990)” from Note 1.
405.03(d) Application of Limit: Counting Interrogatories	Corrected “state of facts” to “set of facts” in second paragraph; amended paragraph 3 to include that Board will count combined questions as a separate interrogatory; deleted “Carla Calcagno, <i>TIPS FROM THE TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)</i> , 80 Trademark Rep. 285 (1990)” from Notes 1-8; added new case to Note 6: <i>Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.</i> , 19 USPQ2d 1636, 1637 (TTAB 1990); updated reference to Notice of Final Rulemaking, 54 Fed. Reg. 34,886 (August 22, 1989) in Note 7.
405.03(e) Remedy for Excessive Interrogatories	Amended paragraph 3 to clarify that when Board allows party opportunity to serve revised

	set of interrogatories, they are usually unrestricted in scope.
	Deleted final paragraph from this section, reading: “[Please Note: Although some of the cases cited in this TBMP section were decided under an earlier version of 37 CFR § 2.120(d)(1) governing the procedure for objecting to interrogatories on the basis of their excessive number, the decisions are otherwise applicable to the issues which may arise under Rule 2.120(d)(1)].”
	Added new case to Note 1, by comparison: <i>Amazon Technologies v. Wax</i> , 93 USPQ2d 1702, 1705 (TTAB 2009).
	Deleted “Helen R. Wendel, <i>TIPS FROM THE UNITED STATES PATENT AND TRADEMARK OFFICE TTAB: The Burden Shifts: Revised Discovery Practice Under Trademark Rule 2.120(d)(1)</i> , 82 Trademark Rep. 89 (1992)” from Notes 1, 3, 4, and 5; deleted Notes 7 and 8, citing to the article.
405.04 Responses To Interrogatories	Section heading only.
405.04(a) Time for Service of Responses	Amended first paragraph to add that where service is by electronic means, five extra days are not added to time for responding to interrogatories.
	Amended second paragraph to add explanation that objections based on confidentiality are expected to be rare.
	Added new Note 2, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42250 (August 1, 2007).
	Added new Note 6, citing: 37 CFR § 2.116(g).
405.04(b) Nature of Responses	Added references to Fed. R. Civ. P. 33(b)(3); 33(b)(4); and 33(d).
	Amended third paragraph to inform reader regarding option to produce electronic information under Fed. R. Civ. P. 33(d), and its limitations.
	Amended reference to Fed. R. Civ. P. 33 from “33(b)” to “33(b)(2)” in Note 1.
	Deleted Note 3, citing: G. Douglas Hohein, <i>TIPS FROM THE TTAB: Potpourri</i> , 71 Trademark Rep. 163 (1981).

	Added new case to Note 3: <i>Johnson & Johnson v. Obschestvo s ogranichennoy otvetstvennostiu "WDS,"</i> 95 USPQ2d 1567 (TTAB 2010).
	Added new Notes 4 and 5, citing: Fed. R. Civ. P. 33 Advisory Committee's notes, (2006 Amendment, Rule 33(d)).
	Updated reference to "8B C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE: Civil 3d § 2178 (2009)" from "8B C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE: Civil 2d § 2178 (1994)" in Note 6.
405.04(c) Signature of Responses and Authority of Signer (new title)	Added "and Authority of Signer" to end of title of this section.
	Added references to Fed. R. Civ. P. 33(b)(1) and 33(b)(5).
	Amended paragraphs 1 and 2 to include reference to "partner" as eligible signatory of interrogatories; and changed "answers" to "responses" in paragraph 4.
	Deleted "Fed. R. Civ. P. 33(a)" from Note 1; and amended "Fed. R. Civ. P. 33(b)(2)" to "Fed. R. Civ. P. 33(b)(5)" in Note 4.
406 Requests For Production Of Documents And Things And Electronically Stored Information (new title)	Section Heading only. Amended title to add "and Electronically Stored Information."
406.01 When Permitted And By Whom (new title)	Updated title from "When and By Whom Served"
	Amended first paragraph to inform reader that discovery may only be served before or concurrently with, initial disclosures in proceedings commenced on or before November 1, 2007.
	Amended paragraph 2 to add that document requests may not be served on non-party.
	Added new third paragraph setting forth criteria for determining when Board may impose sanctions for non-compliance with discovery request on natural person residing in foreign country.
	Added new Note 4, citing: <i>Societe</i>

	<i>Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers</i> , 357 U.S. 197 (1958).
	Added new Note 5, citing: <i>Cochran Consulting Inc. v. Uwatec USA Inc.</i> , 102 F3d 1224, 41 USPQ2d 1161 (Fed. Cir. 1996).
406.02 Scope	Amended references to Fed. R. Civ. P. 34(a)(1)(A) and (B) and 34(a)(2) to reflect rules changes.
	Amended second paragraph to admonish reader that party may not state it will produce documents and then claim it does not possess them; and to indicate that party is not under obligation to create or prepare documents that do not already exist.
	Added new Note 2, citing: <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America, Inc.</i> , 74 USPQ2d 1672, 1679 (TTAB 2005).
	Added new Note 3, citing: 8B C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE Civil 3d § 2210 (2009).
406.03 Elements Of Request For Production (new title)	Updated title from “Elements Of Request For Production; Place Of Production.”
	Amended reference to Fed. R. Civ. P. 34(b) to reflect rules changes.
	Amended text to add discussion of data formatting of production of electronically stored information.
	Added new Note 1, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 and 42252 (August 1, 2007); 37 CFR § 2.120(a)(2); and Fed. R. Civ. P. 26(f).
406.04 Responses To Requests For Production	Added reference to Fed. R. Civ. P. 34(b)(2)(A)-(E). Added text discussing production of electronically stored information. Added new Note 1, citing: Fed. R. Civ. P. 34(b)(2)(e); and <i>Amazon v. Wax</i> , 95 USPQ2d 1865, 1869 (TTAB 2010).
406.04(a) Time for Service of Responses	Added references to Fed. R. Civ. P. 34(b)(2)(A) and 37 CFR § 2.120(a)(3).
	Amended first paragraph to indicate that date for responding to document requests may be amended by stipulation of parties or by Board order; and that additional five days for

	response does not apply to electronic service of discovery requests.
	Added new Note 3, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42250 (August 1, 2007).
406.04(b) Place and Form of Production (new section)	This is a new section, referencing 37 CFR § 2.120(d)(2) and Fed. R. Civ. P. 34(b)(2)(E) and describing procedures for determining place of production of requested documents and things, including electronically stored information.
	Added new Note 1, citing: <i>Electronic Industries Association v. Potega</i> , 50 USPQ2d 1775, 1777 (TTAB 1998); <i>Unicut Corp. v. Unicut, Inc.</i> , 220 USPQ 1013, 1015 (TTAB 1983); and <i>Georgia-Pacific Corp. v. Great Plains Bag Co.</i> , 190 USPQ 193, 195 (TTAB 1976).
	Added new Note 2, citing: <i>No Fear Inc. v. Rule</i> , 54 USPQ2d 1551 (TTAB 2000).
	Added new Note 3, referencing: Fed. R. Civ. P. 34(b)(2)(i).
	Added new Note 4, citing: <i>No Fear Inc. v. Rule</i> , 54 USPQ2d 1551, 1555 (TTAB 2000); and <i>Electronic Industries Association v. Potega</i> , 50 USPQ2d 1775 (TTAB 1998).
	Added new Note 5, citing: <i>Influence Inc. v. Zuker</i> , 88 USPQ2d 1859, 1861 (TTAB 2008)(most efficient means of making initial disclosures of documents and the option the Board encourages parties to use is to actually exchange copies of disclosed documents rather than merely identifying location.)
	Added new Note 6, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 and 42252 (August 1, 2007); 37 CFR § 2.120(a)(2); and Fed. R. Civ. P. 26(f).
	Added new Note 7, referencing: Fed. R. Civ. P. 34(b)(2)(E)(ii); and Fed. R. Civ. P. 34 Advisory Committee's notes, 2006 Amendment (Rule 34, Subdivision (b)).
	Added new Note 8, referencing: Fed. R. Civ. P. 34 Advisory Committee's notes, 2006 Amendment (Rule 34, Subdivision (b)).
	Added new Note 9, referencing: Fed. R. Civ. P. 34 Advisory Committee's notes, 2006

	Amendment (Rule 34, Subdivision (b)).
	Added new Note 10, referencing: Fed. R. Civ. P. 34(b)(2)(E)(iii).
	Added new Note 11, citing: <i>See No Fear Inc. v. Rule</i> , 54 USPQ2d 1551, 1555 (TTAB 2000); and <i>Unicut Corp. v. Unicut, Inc.</i> , 220 USPQ 1013 (TTAB 1983); and, by comparison, <i>Electronic Industries Association v. Potega</i> , 50 USPQ2d 1775 (TTAB 1998); deleted from Note 11: Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 385 (1985)
406.04(c) Nature of Responses (new title)	Updated section numbering from 406.04(b) to 406.04(c).
	Added references to Fed. R. Civ. P. 34(b)(2)(B)-(D).
	Amended first paragraph to elaborate on how to respond to requests for production of documents, including electronically stored information.
	Updated reference to Fed. R. Civ. P. 34(b) in Note 1, and moved citation of <i>No Fear Inc. v. Rule</i> , 54 USPQ2d 1551, 1555 (TTAB 2000) from Note 1 to new Note 2.
	Added new Note 3, citing: <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America, Inc.</i> , 74 USPQ2d 1672, 1679 (TTAB 2005).
	Added new Note 4, citing: Fed. R. Civ. P. 34(b)(2)(D).
	Updated reference to “C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE Civil 3d § 2213 (2009)” from “C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE Civil 2d § 2213 (2d ed. 1994)” in Note 5.
	Added new Note 6, referencing: Fed. R. Civ. P. 26(f)(3)(c); and Fed. R. Civ. P. 34 Advisory Committee’s note, (2006 Amendment Rule 34, Subdivision (b)).
	Added new Note 7, referencing: Fed. R. Civ. P. 34(b)(2)(E)(ii).
407 Requests For Admissions	Section Heading only.
407.01 When Permitted And By Whom (new title)	Updated title of this section from “When and By Whom Served”.

	Amended text to inform reader that for cases commenced on or after November 1, 2007, initial disclosures must be served before or concurrently with requests for admissions.
	Added new Note 1, referencing: Fed. R. Civ. P. 36(a); and 37 CFR § 2.120(a).
407.02 Scope And Nature Of Requests For Admission	Updated reference to Fed. R. Civ. P. 36(a) to reflect rules changes.
	Deleted reference to “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 385 (1985)” from Note 1 and added citation to <i>ProQuest Information and Learning Co. v. Island</i> , 83 USPQ2d 1351 (TTAB 2007); and <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100 (TTAB 2007) in Note 1.
407.03 Responses To Requests For Admission	Section Heading only.
407.03(a) Time for Service of Responses	Added references to 37 CFR § 2.120(a)(3); Fed. R. Civ. P. 36(a); and Fed. R. Civ. P. 6(b) and 6(b)(1)(B).
	Amended first paragraph to inform reader that five additional days for responding to requests for admissions are not added to response time when service of requests is by electronic means.
	Added new second paragraph instructing reader that requests for admissions are deemed admitted if not responded to within thirty days or such other agreed-upon time.
	Amended third paragraph by editing the wording “automatically admitted” to “admitted by operation of law” and by adding that a motion to deem requests for admissions admitted is unnecessary.
	Added new Note 3, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42250 (August 1, 2007).
	Added new Note 4, referencing: Fed. R. Civ. P. 36(a)(3).
	Added new Note 5, citing: <i>Fram Trak Industries</i> , 77 USPQ2d 2000, 2005 (TTAB

	2006); and <i>Pinnocchio's Pizza Inc. v. Sandia Inc.</i> , 11 USPQ2d 1227, 1228 n.5 (TTAB 1989).
	Added new Note 6, referencing: Fed. R. Civ. P. 6(b)(1)(B); and citing: <i>Giersch v. Scripps Networks Inc.</i> , 85 USPQ2d 1306, 1307 (TTAB 2007).
	Amended Note 7 by deleting reference to Fed. R. Civ. P. 6(b); and changing reference from Fed. R. Civ. P. 36(a) to Fed. R. Civ. P. 36(b). Added citation to <i>Giersch v. Scripps Networks Inc.</i> , 85 USPQ2d 1306, 1307 (TTAB 2007) in Note 7. Changed signal to “see also” for <i>American Automobile Ass'n (Inc.) v. AAA Legal Clinic of Jefferson Crooke, P.C.</i> , 930 F.2d 1117, 19 USPQ2d 1142, 1144 (5th Cir. 1991) in Note 7. Added pin cite and parenthetical to <i>Questor Corp. v. Dan Robbins & Associates, Inc.</i> , 199 USPQ 358, 361 n.2 (TTAB 1978), <i>aff'd</i> , 599 F.2d 1009, 202 USPQ 100 (CCPA 1979)
	Deleted from Note 7 reference to the following cases: <i>Bison Corp. v. Perfecta Chemie B.V.</i> , 4 USPQ2d 1718 (TTAB 1987); <i>Luehrmann v. Kwik Kopy Corp.</i> , 2 USPQ2d 1303 (TTAB 1987); <i>Envirotech Corp. v. Compagnie Des Lampes</i> , 219 USPQ 448 (TTAB 1979); <i>MacMillan Bloedel Ltd. v. Arrow-M Corp.</i> , 203 USPQ 952, (TTAB 1979); and <i>Crane Co. v. Shimano Industrial Co.</i> , 184 USPQ 691 (TTAB 1975).
407.03(b) Nature of Responses	Added reference to Fed. R. Civ. P. 36(a).
	Deleted “G. Douglas Hohein, <i>TIPS FROM THE TTAB: Potpourri</i> , 71 Trademark Rep. 163, 167 (1981)” from Note 2.
407.03(c) Signature of Responses	Updated reference to Fed. R. Civ. P. 36(a)(3) from Fed. R. Civ. P. 36(a).
	Added new Note 2, referencing: 37 CFR § 10.63; and adding, by comparison, <i>Allstate Insurance Co. v. Healthy America Inc.</i> , 9 USPQ2d 1663 n.4 (TTAB 1988).
407.04 Effect Of Admission	Amended first paragraph to include, as additional means for amending responses to requests for admissions that are deemed admitted, Board’s grant of reopening of party’s time to respond to admissions requests.

	Added new reference and cases to Note 1: Fed. R. Civ. P. 6(b)(1)(B); <i>Texas Department of Transportation v. Tucker</i> , 95 USPQ2d 1241 (TTAB 2010); <i>Sinclair Oil Corp. v. Kendrick</i> , 85 USPQ2d 1032, 1037 n.8 (TTAB 2007); <i>Baseball America Inc. v. Powerplay Sports Ltd.</i> , 71 USPQ2d 1844, 1846 n.7 (TTAB 2004); and <i>Olin Corporation v. Hydrotreat, Inc.</i> , 210 USPQ 63, 65 n.4 (TTAB 1981).
408 Duties To Cooperate, Search Records, Supplement	Section Heading only.
408.01 Duty To Cooperate	Amended text to include statement that there is no concept of priority in discovery.
	Added new Note 1, citing: <i>Panda Travel Inc., v. Resort Option Enterprises, Inc.</i> , 94 USPQ2d 1789, 1791 (TTAB 2009); <i>Amazon Technologies Inc. v. Wax</i> , 93 USPQ2d 1702, 1705 (TTAB 2009); and <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1654 (TTAB 2007).
	In Note 2: Removed signal “see, for example,” before reference to Fed. R. Civ. P. 26(g). Added parentheses to <i>Johnston Pump/General Valve Inc. v. Chromalloy American Corp.</i> , 13 USPQ2d 1719, 1721 n.4 (TTAB 1989); to <i>C. H. Stuart Inc. v. Carolina Closet, Inc.</i> , 213 USPQ 506, 507 (TTAB 1980); to <i>C. H. Stuart Inc. v. S. S. Sarna, Inc.</i> , 212 USPQ 386, 387 (TTAB 1980); and to <i>Varian Associates v. Fairfield-Noble Corp.</i> , 188 USPQ 581, 584 (TTAB 1975). Amended parentheses to <i>Sentrol, Inc. v. Sentex Systems, Inc.</i> , 231 USPQ 666, 667 (TTAB 1986); and to <i>Unicut Corp. v. Unicut, Inc.</i> , 222 USPQ 341, 344 (TTAB 1984).
	Added new Note 3, citing: <i>Miss America Pageant v. Petite Productions, Inc.</i> , 17 USPQ2d 1067 (TTAB 1990); and <i>Giant Food, Inc. v. Standard Terry Mills, Inc.</i> , 231 USPQ 626 (TTAB 1986).
	Deleted discussion regarding Fed. R. Civ. P. 26(g)(2).
408.01(a) Obligation to Conduct Discovery Conference (new section)	This is a new section describing parties’ mutual obligation to conduct discovery conference, procedures to follow, topics to be discussed, and sanctions for failure to hold a discovery

	conference.
	Added new Note 1, citing: 37 CFR § 2.120(a)(2); Fed. R. Civ. P. 26(f); Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 (August 1, 2007); and <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759 (TTAB 2009).
	Added new Notes 2, 3, 4 and 6, citing: <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759 (TTAB 2009).
	Added new Note 5, citing: <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759 (TTAB 2009); <i>Guthy-Renker Corp. v. Michael Boyd</i> , 88 USPQ2d 1701, 1703 (TTAB 2008); and <i>Influence Inc. v. Zuker</i> , 88 USPQ2d 1859, 1860 n.2 (TTAB 2008).
	Added new Note 7, referencing: 37 CFR § 2.120(g)(1).
	Added new Note 8, citing: <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759 (TTAB 2009); <i>Guthy-Renker Corp. v. Michael Boyd</i> , 88 USPQ2d 1701, 1703 (TTAB 2008).
408.01(b) Obligation to Make Initial and Expert Testimony Disclosures (new section)	This is a new section describing parties' mutual obligation to serve initial and expert disclosures, procedures to follow, reasons for requirements and cross-referencing TBMP §§ 401.02-04 for further information.
	Added new Notes 1 and 2, referencing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244 and 42246 (August 1, 2007).
	Added new Note 3, referencing 37 CFR § 2.120(a)(1); and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Added new Notes 4, 5, 7 and 8, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Added new Note 6, referencing 37 CFR § 2.120(a); Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007); and <i>Jules Jurgenson/Rhapsody, Inc. v. Peter Baumberger</i> , 91 USPQ2d 1443 (TTAB 2009).
408.01(c) Duty to	This is a new section, referencing Fed. R. Civ.

Cooperate with Regard to Written Discovery and Disclosures (new section)	P. 26(g)(1) and 37 CFR § 2.120(e)(1), and describing certification by signature of discovery requests, responses, objections or disclosures.
	Moved the last two paragraphs of TBMP § 408.01 (Duty to Cooperate) from the 2004 version of the manual to this section, as paragraphs 1 and 2.
	Added new paragraph 3, regarding signature of a disclosure and cross-referencing TBMP § 401.06.
	Added new paragraph 4, to address requirement of good faith efforts with respect to motion to compel as extension of duty to cooperate.
	Added new Notes 2 and 4, citing Fed. R. Civ. P. 26 Advisory Committee's notes, (1983 Amendment Rule 26, Subdivision (g)).
	Added new Note 3, citing <i>Miss America Pageant v. Petite Productions, Inc.</i> , 17 USPQ2d 1067, 1069 (TTAB 1990).
	Added new Notes 5 and 6, referencing 37 CFR § 2.120(e).
	Added new Note 7, referencing 37 CFR § 2.120(e); and citing, by comparison, <i>International Finance Corp. v. Bravo Co.</i> , 64 USPQ2d 1597, 1605 (TTAB 2002).
408.02 Duty To Search Records	Amended first paragraph to inform reader how to properly respond to document production requests.
	Added cross-reference to TBMP § 527.01(e) in paragraph 2.
	Added new Note 1, citing: <i>No Fear Inc. v. Rule</i> , 54 USPQ2d 1551 (TTAB 2000).
	Added new Notes 2 and 4, citing: <i>No Fear Inc. v. Rule</i> , 54 USPQ2d 1551, 1556 (TTAB 2000).
	Added new Note 3, referencing Fed. R. Civ. P. 34(b)(2).
	Added new case to Note 5: <i>Panda Travel, Inc. v. Resort Option Enterprises, Inc.</i> , 94 USPQ2d 1789 (TTAB 2009).
408.03 Duty To Supplement Disclosures And Discovery Responses (new title)	Amended title from "Duty to Supplement Discovery Response"
	Amended reference to Fed. R. Civ. P. 26(e)

	and added reference to Fed. R. Civ. P. 26(e)(1)(A)-(B) and 26(e)(2).
	Amended text to describe requirements for supplementing disclosure and discovery responses as governed by Fed. R. Civ. P. 26(e)(1) and (2); treatment of information otherwise made known; possible sanctions for failure to supplement; and to inform reader that Fed. R. Civ. P. 37(c)(1)(A) and 37(c)(1)(B) do not apply in Board proceedings.
	Added new case to Note 2: <i>Vignette Corp. v. Marino</i> , 77 USPQ2d 1408 (TTAB 2005).
	Added new Note 3, citing <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1861 (TTAB 2009); and, by comparison, <i>Byer California v. Clothing for Modern Times Ltd</i> , 95 USPQ2d 1175 (TTAB 2010) and referencing Fed. R. Civ. P. 26(e) Advisory Committee Notes (1993 amendment Rule 26(e)).
	Added new Note 4, citing <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1861 (TTAB 2009).
	Added new Note 5, citing, by comparison: <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1175 (TTAB 2010); and <i>Vignette Corp. v. Marino</i> , 77 USPQ2d 1408, 1411 (TTAB 2005); and citing, under “see also” signal: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859 (TTAB 2009).
	Added new cases to Note 7: <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1175 (TTAB 2010); and, by comparison, <i>Bison Corp. v. Perfecta Chemie B.V.</i> , 4 USPQ2d 1718 (TTAB 1987); <i>Andersen Corp. v. Therm-O-Shield Int'l, Inc.</i> , 226 USPQ 431 (TTAB 1985); and <i>JSB International, Inc. v. Auto Sound North, Inc.</i> , 215 USPQ 60 (TTAB 1982).
409 Filing Discovery Requests, Discovery Responses, And Disclosures With Board (new title)	Updated title from “Filing Discovery Requests and Responses With Board”
	Amended references to 37 CFR § 2.120(j) to reflect rules changes.

	Amended first paragraph to include initial and expert disclosures among materials that should not be filed with Board except under specified conditions; updated statement of conditions to include motion to challenge sufficiency of disclosures and notice of reliance on disclosures, where appropriate.
	Added new second paragraph to inform reader that notice of intention to use expert testimony should be filed with the Board.
	Added new paragraph 3 to inform reader that pretrial disclosures should not be filed with Board except with appropriate motion, and cross-referencing TBMP § 702.01 for further information.
	Amended paragraph 4 to include motion to strike witness testimony as circumstance wherein copies of pertinent discovery requests, responses, or disclosures should be submitted in support of motion.
	Deleted following sentence from end of this section: "Discovery papers or materials filed with the Board under circumstances other than those specified above may be returned to the party that filed them."
	Added new Note 1, citing: <i>Hiraga v. Arena</i> , 90 USPQ2d 1102 (TTAB 2009); <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953 (TTAB 2008); <i>Ballet Tech Foundation Inc. v. Joyce Theater Foundation Inc.</i> , 89 USPQ2d 1262, 1265 n.2 (TTAB 2008); <i>Tri-Star Marketing LLC v. Nino Franco Spumanti S.R.L.</i> , 84 USPQ2d 1912 (TTAB 2007); <i>ProQuest Information and Learning Co. v. Island</i> , 83 USPQ2d 1351 (TTAB 2007); <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100 (TTAB 2007); <i>B.V.D. Licensing Corp. v. Rodriguez</i> , 83 USPQ2d 1500 (TTAB 2007); and <i>Genesco Inc. v. Martz</i> , 66 USPQ2d 1260 (TTAB 2003).
	Added new Note 2, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007); and 37 CFR § 2.120(a)(2).
	Added new Note 3, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board

	Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Added new case to Note 4: <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541, 1542 n.2 (TTAB 2008); amended parenthetical to <i>Kellogg Co. v. Pack'Em Enterprises, Inc.</i> , 14 USPQ2d 1545, 1549 n.9 (TTAB 1990), <i>aff'd</i> , 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991) from “(regarding a motion for summary judgment)”; amended parenthetical to <i>Midwest Plastic Fabricators Inc. v. Underwriters Laboratories Inc.</i> , 5 USPQ2d 1067, 1070 (TTAB 1987) from “(respondent again reminded that discovery materials are not to be filed with the Board except under specified circumstances)”; deleted “G. Douglas Hohein, TIPS FROM THE TTAB: Potpourri, 71 Trademark Rep. 163, 166-167 (1981) (but note that this article was written prior to the rule changes noted above).”
410 Asserting Objections To Requests For Discovery; Motions Attacking Requests For Discovery, And Disclosures (new title)	Updated title from “Asserting Objections To Requests For Discovery; Motions Attacking Requests For Discovery.”
	Added new paragraphs 3, 4, and 5 to inform reader that unexcused failure to respond to discovery requests during time allowed may result in forfeiture of right to object; that objections based on confidentiality are expected to be minimal in light of imposition of Board’s standard protective order; and that for cases commenced on or after November 1, 2007, failure to serve initial disclosures is a valid ground for objecting to propounded discovery, but objection must be made on that basis.
	Amended paragraph 7 to provide example where request for discovery may constitute harassment.
	Amended paragraph 8 to explain that motion to quash or for protective order may be available to party on which a notice of deposition was served.
	Amended paragraph 9 to explain availability of

	motion to compel in order to object to or test sufficiency of disclosures.
	Added new Note 1, citing: <i>No Fear, Inc. v. Rule</i> , 54 USPQ2d 1551 (TTAB 2000); <i>Bison Corp. v. Perfecta Chemie B.V.</i> , 4 USPQ2d 1718 (TTAB 1987); <i>Luehrmann v. Kwick Kopy Corp.</i> , 2 USPQ2d 1303 (TTAB 1987); <i>Envirotech Corp. v. Compagnie Des Lampes</i> , 219 USPQ 448 (TTAB 1979); <i>McMillan Bloedel Ltd. v. Arrow-M Corp.</i> , 203 USPQ 952 (TTAB 1979); and <i>Crane Co. v. Shimano Industrial Co.</i> , 184 USPQ 691 (TTAB 1975).
	Added new Note 2, citing: <i>No Fear, Inc. v. Rule</i> , 54 USPQ2d 1551 (TTAB 2000).
	Added new Note 3, referencing: 37 CFR § 2.116(g).
	Added new Note 4, citing: <i>No Fear, Inc. v. Rule</i> , 54 USPQ2d 1551 (TTAB 2000).
	Added new Note 5, citing: <i>Dating DNA, LLC v. Imagini Holdings, LLC</i> , 94 USPQ2d 1889 (TTAB 2010).
	Added new Note 6, citing: <i>Amazon Technologies Inc. v. Wax</i> , 93 USPQ2d 1702, 1705 (TTAB 2009).
	Deleted citation to <i>Luemme Inc. V. D.B. Plus Inc.</i> , 53 USPQ2d 1758, 1761 (TTAB 1999) from Note 7.
	Amended parenthetical to <i>Medtronic, Inc. v. Pacesetter Systems, Inc.</i> , 222 USPQ 80, 83 (TTAB 1984) from “(party must articulate objections with particularity)” in Note 7; added parentheticals to citations for <i>Fidelity Prescriptions, Inc. v. Medicine Chest Discount Centers, Inc.</i> , 191 USPQ 127 (TTAB 1976); and <i>Volkswagenwerk Aktiengesellschaft v. Ridewell Corp.</i> , 188 USPQ 690 (TTAB 1975) in Note 7.
	Deleted “See Helen R. Wendel, <i>TIPS FROM THE UNITED STATES PATENT AND TRADEMARK OFFICE TTAB: The Burden Shifts: Revised Discovery Practice Under Trademark Rule 2.120(d)(1)</i> , 82 Trademark Rep. 89 (1992)” from Note 8.
	Deleted “ <i>FMR Corp. v. Alliant Partners</i> , 51 USPQ2d 1759, 1764 (TTAB 1999) (protective order against taking deposition of high-level

	official granted); <i>Gold Eagle Products Co. v. National Dynamics Corp.</i> , 193 USPQ 109, 110 (TTAB 1976) (protective order granted since obligation to respond to discovery requests rests with assignee); and <i>Kellogg Co. v. New Generation Foods Inc.</i> , 6 USPQ2d 2045, 2049 (TTAB 1988) (motion to quash one notice to depose person who was no longer an employee and another notice to depose person with authority to negotiate settlement, granted)” from Note 9.
	Added new case to Note 10: <i>National Football League v. DNH Management LLC</i> , 85 USPQ2d 1852 (TTAB 2008).
	Added new Note 11, referencing 37 CFR § 2.120(e); and citing: <i>Influence v. Zuker</i> , 88 USPQ2d 1859 (TTAB 2008).
	Added new Note 12, referencing 37 CFR § 2.120(e).
	Added new Note 13, citing <i>Kairos Institute of Sound Healing, LLC v. Doolittle Gardens, LLC</i> , 88 USPQ2d 1541 (TTAB 2008).
411 Remedy For Failure To Provide Disclosures Or Discovery (new title)	Updated title from “Remedy For Failure To Provide Discovery”
411.01 Initial And Expert Testimony Disclosures (new section)	This is a new section, describing motions to compel service of initial and expert disclosures and availability of sanctions. Cross-references TBMP §§ 527.01 and 702.01.
	Added new Note 1, referencing 37 CFR § 2.120(e); and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42256 (August 1, 2007); and citing: <i>Influence v. Zuker</i> , 88 USPQ2d 1859 (TTAB 2008).
	Added new Note 2, referencing 37 CFR § 2.120(e).
	Added new Note 3, referencing 37 CFR § 2.120(g)(1); and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42256 (August 1, 2007); and citing: <i>Amazon Technologies v. Wax</i> , 93 USPQ2d 1702, 1706 (TTAB 2009); and under signal “but see,” 37 CFR § 2.120(g)(2); and <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541

	(TTAB 2008).
411.02 Interrogatories Or Requests For Production (new numbering)	Updated the numbering of this section from 411.01 to 411.02.
	Amended text to explain that motion to compel must precede motion for sanctions.
	Added new Note 1, referencing 37 CFR § 2.120(e).
	Added new Note 3, referencing 37 CFR § 2.120(g)(2) and citing, by comparison: <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541 (TTAB 2008) (regarding disclosures); and <i>HighBeam Marketing LLC v. Highbeam Research LLC</i> , 85 USPQ2d 1902, 1906 (TTAB 2008).
411.03 Requests For Admission (new numbering)	Updated the numbering of this section from 411.02 to 411.03.
	Amended second paragraph to indicate that sufficiency of response to request for admission should not be challenged as long as request is either admitted or denied, even if response includes objection to request.
	Added new Note 1, citing: <i>Giersch v. Scripps Networks Inc.</i> , 85 USPQ2d 1306 (TTAB 2007); and <i>Hobie Designs, Inc. v. Fred Hayman Beverly Hills, Inc.</i> , 14 USPQ2d 2064 (TTAB 1990).
	Added new Note 4, referencing Fed. R. Civ. P. 26(a).
411.04 Discovery Depositions (new numbering)	Updated the numbering of this section from 411.03 to 411.04.
	Amended first paragraph to include information regarding non-party witness depositions; and amended second paragraph to inform reader that witness should normally answer all questions, but that immediate court order to compel answer may be available.
	Added new Note 1, referencing 37 CFR § 2.120(e); and, by comparison, Fed. R. Civ. P. 37(a).
	Added new Note 2, referencing 37 CFR § 2.120(e); and adding parenthetical to <i>Neville Chemical Co. v. Lubrizol Corp.</i> , 183 USPQ 184, 189 (TTAB 1974). Deleted “ <i>S. Rudofker’s</i>

	<i>Sons, Inc. v. "42" Products, Ltd.</i> , 161 USPQ 499 (TTAB 1969); and <i>Bordenkircher v. Solis Entrialgo y Cia., S. A.</i> , 100 USPQ 268, 276-278 (Comm'r 1953)" from Note 2.
411.05 Sanctions Related To Disclosures And Discovery (new title and new numbering)	Updated title from "Discovery Sanctions" and renumbered section from 411.04 to 411.05.
	Amended text to include discussion of sanctions available for party's failure to provide disclosures or participate in discovery conference.
	Added new Note 1, citing, by example: <i>Amazon v. Wax</i> , 95 USPQ2d 1865 (TTAB 2010).
	Added new Note 2, citing: <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759 (TTAB 2009); and <i>Guthy-Renker Corp. v. Michael Boyd</i> , 88 USPQ2d 1701, 1704 (TTAB 2008).
412 Protective Orders	Added references to 37 CFR § 2.116(g); Fed. R. Civ. P. 26(c)(1)(A)-(H); Fed. R. Civ. P. 26(c)(2); and excerpts from the Board's standard protective order. Updated reference to 37 CFR § 2.120(f) to reflect rules changes.
	Added new first paragraph to inform reader of two types of protective orders available from the Board.
412.01 In General -- Board Standard Protective Order (new title)	Updated title from "In General."
	Added paragraphs 1-5 to advise reader of automatic imposition of Board's standard protective order; to discuss effect of protective order in Board proceeding; Board's authority to enforce order during proceeding; and parties' obligation to designate information as confidential, cross-referencing TBMP § 703.01(p) and parties' ability to modify terms of order cross-referencing TBMP § 412.02(a).
	Amended paragraph 6 to expand discussion regarding issuance of protective order to protect party from harassment; updated reference to Fed. R. Civ. P. 26(c) from Fed. R. Civ. P. 26(c)(1)-(8) to Fed. R. Civ. P. 26(c)(A)-(H) in paragraph 6.
	Added new Note 1, referencing 37 CFR §

	2.116(g); and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244 (August 1, 2007); and citing, by example: <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541, 1544 (TTAB 2009).
	Added new Note 2, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244 (August 1, 2007).
	Added new Notes 3, 4, and 5, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42251 (August 1, 2007).
	Added new Notes 6 and 7, referencing: 37 CFR § 2.116(g); and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244 (August 1, 2007).
	Added new Note 8, citing, by example: <i>Wet Seal, Inc. v. FD Management, Inc.</i> , 82 USPQ2d 1629, 1633 n.6 (TTAB 2007).
	Added new Note 9, citing, by example: <i>Georgia Pacific Corp. v. Solo Cup Co.</i> , 80 USPQ2d 1950, 1954 (TTAB 2006); and <i>Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas, Inc.</i> , 77 USPQ2d 1492, 1495, n.5 (TTAB 2005).
	Added new Note 10, citing, by example: <i>Amazon Technologies, Inc. v. Wax</i> , 93 USPQ2d 1702, 1706 n.6 (TTAB 2009).
	Added new Note 11, referencing: 37 CFR § 2.120(g).
	Added new Note 12, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244 (August 1, 2007).
	Added new reference and new case to Note 13: Fed. R. Civ. P. 26(c)(1) and, by example, <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America, Inc.</i> , 74 USPQ2d 1672 (TTAB 2005).
	Added new Note 14, citing: <i>FMR Corp. v. Alliant Partners</i> , 51 USPQ2d 1759, 1761 (TTAB 1999).
	Added new Note 15, citing: <i>A. Hirsh, Inc. v. United States</i> , 657 F. Supp. 1297, 1305 (C.I.T.

	1987).
	Added new Note 16, citing, by example: <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America, Inc.</i> , 74 USPQ2d 1672 (TTAB 2005).
	Added new Note 17, referencing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244 (August 1, 2007).
412.02 Modification Of Board's Standard Protective Order Governing The Exchange Of Confidential, Highly Confidential And Trade Secret/Commercially Sensitive Information (new title)	Updated title from: "Protective Order Regarding Confidential and Trade Secret Information"
	Added new first paragraph to inform reader that Board's standard protective order may be modified; amended reference to 8A C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE Civil 3d § 2043 (2009) in Note 1 by deleting "Wright & Miller, Federal Practice & Procedure, Chap. 6" and updating date from "2006."
412.02(a) Modification of Board's Standard Protective Order Upon Stipulation (new title)	Updated title from "Upon Motion" and combined with former TBMP § 412.02(b) "Upon Stipulation" to form single section.
	Deleted former TBMP §§ 412.02(a) (Upon Motion) and 412.02(b) (Upon Stipulation) in light of current rule making Board's standard protective order applicable in all proceedings. Added text regarding procedure for modifying terms of order pursuant to parties' agreement. Added new Note 1, citing: <i>Duke University v. Haggard Clothing Co.</i> , 54 USPQ2d 1443, 1445 (TTAB 2000).
412.02(b) Pro Se Litigants and In-House Legal Counsel (new section)	This is a new section regarding the exchange and disclosure of information during discovery in cases involving pro se litigants and in-house legal counsel.
	Added new Note 1, citing <i>A. Hirsh, Inc. v. United States</i> , 657 F. Supp. 1297, 1305 (C.I.T. 1987).

	Added new Note 2, citing: <i>U.S. Steel Corp. v. United States</i> , 730 F.2d 1465 (Fed. Cir. 1984); and <i>Georgia Pacific Corp. v. Solo Cup Co.</i> , 80 USPQ2d 1950, 1953 (TTAB 2006).
412.02(c) In Camera Inspection	No changes to text. Added new Note 1, citing <i>Amazon v. Wax</i> , 95 USPQ2d 1865, 1869 n.8 (TTAB 2010). Deleted: “See Rany L. Simms, <i>TIPS FROM THE TTAB: Stipulated Protective Agreements</i> , 71 Trademark Rep. 653 (1981)” from Note 1.
412.02(d) Contents of Protective Order	Amended text to indicate that modifications may be made to Board’s standard protective order and to list typical terms that revised protective order may encompass. Expanded explanation of procedure at subsection 12 for filing confidential material with the Board to include ESTTA filing and to clarify that two versions of each confidential submission are required.
	Amended penultimate paragraph to update location where Board’s standard protective order may be found from “Appendix of Forms in this manual” to the USPTO website.
	Deleted: “See Rany L. Simms, <i>TIPS FROM THE TTAB: Stipulated Protective Agreements</i> , 71 Trademark Rep. 653 (1981). <i>See also Duke University v. Haggar Clothing Co.</i> , 54 USPQ2d 1443, 1445 (TTAB 2000) (stipulated protective agreement should include provision that it may be amended without leave of Board)” from Note 1. Added clarification that remaining cases cited were decided before automatic imposition of Board’s standard protective order.
412.03 Duration Of Protective Order (new title)	Updated from “Signature of Protective Order”.
	Amended section to include reference to excerpt from Board’s standard protective order. Amended first paragraph to delete the following: “Stipulated protective orders may be signed either by the parties thereto, or by their attorneys, or by both; and to add information about treatment of material disclosed during Board proceeding.
	Amended second paragraph to clarify that Board may not order parties to sign protective

	order and that Board's jurisdiction does not extend to enforcement of protective order following termination of proceeding.
	Amended section by deleting discussion Board imposition of the standard protective order on parties.
	Added new Notes 1 and 3, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42251 (August 1, 2007).
412.04 Filing Confidential Materials With Board	Updated references to 37 CFR § 2.126(c) from 37 CFR § 2.126(d); and added excerpt from section 12 of Board's standard protective order.
	Amended first paragraph to describe method for designating submissions as confidential and to advise reader that absent designation, submissions will be placed in the Board's public record. Further amended first paragraph to indicate that two versions of confidential submission are required; that redactions are determined under rule of reason; and that confidentiality may be considered waived if redacted version not submitted.
	Deleted from section: "Confidential materials filed in the absence of a protective order are not regarded as confidential and are not kept confidential by the Board. [Note 219.] The mere stamping of "confidential" on documents does not operate in lieu of a protective order or agreement." Also deleted from section: "See, e.g., <i>Harjo v. Pro-Football, Inc.</i> , 50 USPQ2d 1705, 1714 (TTAB 1999) (Board agreed to hold exhibits marked confidential for thirty days pending receipt of a motion for a protective order but cautioned that in the absence of such motion, the exhibits would be placed in the proceeding file), <i>rev'd on other grounds</i> , 284 F. Supp. 2d 96, 68 USPQ2d 1225 (D.D.C. 2003)."
	Added new second paragraph regarding use of ESTTA for filing confidential material; cross-referenced TBMP § 120.02 for further information.
	Amended paragraph 4 to clarify procedure for paper submission of confidential material.
	Added new Note 1, referencing: 37 CFR § 2.116(g).

	Amended Note 2 by deleting: “Rany L. Simms, <i>TIPS FROM THE TTAB: Stipulated Protective Agreements</i> , 71 Trademark Rep. 653 (1981).”
	Added new Note 3, citing, by example: <i>Morgan Creek Productions Inc. v. Foria International Inc.</i> , 91 USPQ2d 1134, 1136 n.9 (TTAB 2009); and <i>Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas, Inc.</i> , 77 USPQ2d 1492, 1495, n.5 (TTAB 2005).
	Added new Note 4, citing, by example: <i>Wet Seal, Inc. v. FD Management, Inc.</i> , 82 USPQ2d 1629, 1633 n.6 (TTAB 2007).
	Amended Note 5 by adding: http://estta.uspto.gov/filing-type.jsp ; and by deleting: “See <i>Harjo v. Pro-Football, Inc.</i> , supra (Board agreed to hold exhibits marked confidential for thirty days pending receipt of a motion for a protective order but cautioned that in the absence of such motion, the exhibits would be placed in the proceeding file).”
412.05 Handling Of Confidential Materials By Board	Updated section to inform reader of current procedures for handling of confidential materials during proceeding and following termination.
	Deleted: “See Rany L. Simms, <i>TIPS FROM THE TTAB: Stipulated Protective Agreements</i> , 71 Trademark Rep. 653 (1981)” from Note 1.
	Added new Note 2, citing, by example: <i>Schering Plough HealthCare Products Inc. v. Ing-Jing Huang</i> , 84 USPQ2d 1323, 1324 (TTAB 2007); and <i>Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha</i> , 77 USPQ2d 1917, 1930 n.22 (TTAB 2006).
412.06 Protective Orders Limiting Discovery (new section)	This is a new section, referencing 37 CFR § 2.120(f) and Fed. R. Civ. P. 26(c)(1)(A)-(H); and discussing motions for protective order that discovery not be had or be limited; including requirement for good cause showing; and cross-referencing TBMP §§ 410 and 526 for additional information.
	Added new Note 1, citing, by example: <i>FMR Corp. v. Alliant Partners</i> , 51 USPQ2d 1759, 1764 (TTAB 1999); and <i>Gold Eagle Products Co. v. National Dynamics Corp.</i> , 193 USPQ 109, 110 (TTAB 1976).
	Added new Note 2, citing: 37 CFR § 2.120(f);

	and Fed. R. Civ. P. 26(c)(1).
	Added new Note 3, citing: <i>FMR Corp. v. Alliant Partners</i> , 51 USPQ2d 1759, 1761 (TTAB 1999).
	Added new Note 4, citing: <i>A. Hirsh, Inc. v. United States</i> , 657 F. Supp. 1297, 1305 (C.I.T. 1987).
	Added new Note 5, citing, by example: <i>Johnston Pump/General Valve Inc. v. Chromalloy American Corp.</i> , 13 USPQ2d 1719 (TTAB 1989); and <i>Neville Chemical Co. v. Lubrizol Corp.</i> , 183 USPQ 184 (TTAB 1974).
	Added new Note 6, referencing: Fed. R. Civ. P. 26(c)(1).
412.06(a) Depositions (new section)	This is a new section, describing conditions under which motions to protect a witness from a deposition may be entertained; including discussion of requisite showing of good cause and where burden of proof lies.
	Added new Note 1, referencing: Fed. R. Civ. P. 26(c)(1); and 37 CFR § 2.120(f); and citing: <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America Inc.</i> , 74 USPQ2d 1672, 1674 (TTAB 2005).
	Added new Note 2, referencing: Fed. R. Civ. P. 26(c)(1); and 37 CFR § 2.120(f).
	Added new Note 3, citing: <i>FMR Corp. v. Alliant Partners</i> , 51 USPQ2d 1759, 1761 (TTAB 1999).
	Added new Note 4, referencing: 8A C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE Civil 3d § 2037 (2009).
	Added new Note 5, citing: <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America Inc.</i> , 74 USPQ2d 1672, 1675 (TTAB 2005).
	Added new Note 6, citing: <i>FMR Corp. v. Alliant Partners</i> , 51 USPQ2d 1759, 1762 (TTAB 1999).
	Added new Notes 7-11, citing: <i>FMR Corp. v. Alliant Partners</i> , 51 USPQ2d 1759, 1763 (TTAB 1999).
	Added new Note 12, citing, by comparison: <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America Inc.</i> , 74 USPQ2d 1672, 1677 (TTAB 2005).

	Added new Note 13, referencing: 8A C. WRIGHT, A. MILLER & R. MARCUS, FEDERAL PRACTICE AND PROCEDURE Civil 3d § 2037 (2009).
412.06(b) Other Discovery (new section)	This is a new section, describing conditions under which motions for protection from oppressive discovery may be had; and cross-referencing TBMP §§ 402, 405, 406, 408, 410 and 526.
	Added new Note 1, citing: <i>Medtronic, Inc. v. Pacesetter Systems, Inc.</i> , 222 USPQ 80, 83 (TTAB 1984).
	Added new Note 2, citing: <i>Fort Howard Paper Co. v. G.V. Gambina Inc.</i> , 4 USPQ2d 1552, 1553 (TTAB 1987).
	Added new Note 3, referencing: 37 CFR § 2.120(d).
	Added new Note 4, referencing, by example: Fed. R. Civ. P. 36 Advisory Committee notes (1970 amendment).
	Added new Note 5, citing: <i>Double J of Broward Inc. v. Skalongy Sportswear GmbH</i> , 21 USPQ2d 1609 (TTAB 1991); <i>Fort Howard Paper Co. v. G.V. Gambina Inc.</i> , 4 USPQ2d 1552 (TTAB 1987); <i>C. H. Stuart Inc. v. S.S. Sarna, Inc.</i> , 212 USPQ 386 (TTAB 1980); and <i>Gold Eagle Products Co. v. National Dynamics Corp.</i> , 193 USPQ 109, 110 (TTAB 1976).
413 Telephone And Pretrial Conferences	Section Heading only.
413.01 Telephone Conferences For Motions (new section)	Amended section by adding references to 37 CFR §§ 2.120(i)(1) and 2.127(a); and describing typical situations where parties may be involved in telephone conference with Board attorney or judge. Deleted reference indicating that conferences involve “the parties or their attorneys and an Attorney-Advisor, or a Member, or the Board.” Cross-referenced TBMP § 502.06.
	Added new Note 1, citing, by example: <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1174 (TTAB 2010).
	Added new Note 2, referencing; 37 CFR § 2.127(a); and citing, by example: <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1174 (TTAB 2010).

	Added new Note 3, referencing: 37 CFR § 2.120(i); and citing <i>International Finance Corporation v. Bravo Co.</i> , 64 USPQ2d 1597, 1603 n.24 (TTAB 2002).
413.02 Pretrial Conferences (new section)	This is a new section, referencing 37 CFR § 2.120(i)(2); describing Board's authority to order parties to meet in person; and cross-referencing TBMP § 502.06(b).
	Added new Note 1, citing: <i>Amazon v. Wax</i> , 95 USPQ2d 1865, 1869 (TTAB 2010).
414 Selected Discovery Guidelines	Amended subsection (3) to indicate that names of dealers are typically considered confidential information.
	Amended subsection (7) to include information about discovery of witnesses in pretrial disclosures.
	Amended subsection (11) to clarify when information about goods or services sold under a different mark may be discoverable.
	Added new Notes 8, 9 and 10, referencing 37 CFR § 2.121(e).
	Added new Note 11, citing: <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1175 (TTAB 2010).
	Added new Note 12, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245-6 (August 1, 2007); and citing: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1861 (TTAB 2009).
	Added new Note 14, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Updated Fed. R. Civ. P. 33(a)(2) in Note 29 from Fed. R. Civ. P. 33(c); and deleted reference to Fed. R. Civ. P. 36(a) in Note 29.

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 500**

TBMP SECTION	NATURE OF CHANGE
501.01 Stipulations: In General	Added more examples of type of stipulations available to parties.
	Added new case to Note 2: <i>Target Brands Inc. v. Hughes</i> , 85 USPQ2d 1676, 1678 (TTAB 2007)
501.02 Filing Stipulations	Added an excerpt from 37 CFR § 2.120(a)(2) regarding stipulations to shorten or extend discovery as well as disclosure deadlines; added additional examples of types of stipulations that must be filed with the Board.
	Added an excerpt from 37 CFR § 2.120(a)(3) regarding the requirement to make initial disclosures prior to seeking discovery.
	Amended 37 CFR § 2.121(d) to reflect rules changes.
	Added text regarding stipulations to alter the length of discovery or disclosure obligations, or to reschedule pretrial disclosures and subsequent trial dates to reflect the rules change.
	Added to Note 1: 37 CFR § 2.120(a)(2) and 37 CFR § 2.120(a)(3).
501.03 Form of Stipulations	Deleted <i>Jan Bell Marketing Inc. v. Centennial Jewelers Inc.</i> , 19 USPQ2d 1636 (TTAB 1990) from Note 1.
	In the text, deleted references to former practices, added references to current practices, and noted that when party files to reset dates through ESTTA's "consent motions option," that the system will prompt the user to generate a properly formatted schedule, but that if such a filing does not result in an order that comports with the parties' intentions regarding dates, the filing party should use the "general filings" option instead.
502 Motions – In General	Section Heading only
502.01 Available Motions	Added 37 CFR § 2.123(a) to Note 1.
	Added to Note 2: <i>Genesco Inc. v. Martz</i> , 66 USPQ2d 1260, 1263 (TTAB 2003) and <i>Weyerhaeuser Co. v. Katz</i> , 24 USPQ2d 1230, 1233 (TTAB 1992).

	Added to Note 3: <i>Genesco Inc. v. Martz</i> , 66 USPQ2d 1260, 1263 (TTAB 2003).
	Added to Note 4: <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1175, 1178 (TTAB 2010) and <i>Greenhouse Systems Inc. v. Carson</i> , 37 USPQ2d 1748, 1750-1751 (TTAB 1995).
	Deleted Gary D. Krugman, <i>TIPS FROM THE TTAB: Motions for Judgment after Commencement of Testimony Periods</i> , 73 Trademark Rep. 76 (1983) from Note 4.
	In the text added motions in limine as a type of motion not available in Board proceedings.
502.02 Form of Motions and Briefs on Motions	Amended 37 CFR § 2.126 to reflect rules changes.
	Amended 37 CFR § 2.127 to reflect rules changes.
502.02(a) Form of Motions	In first paragraph, added reference to website as source of information on ESTTA.
	Amended to delete reference to filings by CD-ROM and to amend rules to reflect changes, including renumbering 37 CFR §§ 2.126(b), (c) and (d).
	Deleted the word “file” because the Board no longer maintains physical files.
	In the certificate of mailing paragraph, added an instruction that parties are not permitted to file motions via e-mail except at the request of the Board attorney or judge.
	Added a paragraph explaining that when a party files a motion electronically, the filing is time-stamped with the official filing date when the motion is received by the Office server. Also, included information regarding what to do when the filer does not receive an electronic filing receipt, when ESTTA filings are optional, and that filer should submit filings on paper if ESTTA filing not possible prior to a deadline.
	In last paragraph, added instruction not to file paper copy when motion has been filed electronically and added “fax” as an electronic means of service to which the parties may agree.
	Added discussion regarding service by e-mail, including new Note 5 citing 37 CFR § 2.119(b)(6) and referencing 37 CFR § 2.119(c) in the text of the subsection.

	Added <i>Sinclair Oil Corp. v. Kendrick</i> , 85 USPQ2d 2032, 1033 n.3 (TTAB 2007) to Note 1 to emphasize the importance of a proper caption.
502.02(b) Briefs on Motions	Deleted references to filing briefs by CD-ROM and former Note 22.
	Added to Note 3: <i>Cooper Technologies Co. v. Denier Electric Co.</i> , 89 USPQ2d 1478, 1479 (TTAB 2008).
	Added an explanation that because 37 CFR § 2.127(a) does not require a table of contents or a table of cases and authorities, that if a party includes them in its brief, the additional pages are included in the page count. Added new Note 4 citing <i>Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.</i> , 66 USPQ2d 1220, 1222 (TTAB 2003).
	Amended text and deleted former Notes 30 and 34 to reflect rules changes permitting the filing of reply briefs for motions as a matter of right.
	Added to Note 10: 37 CFR § 2.127(a) and <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies</i> , 73 USPQ2d 1672, 1677 (TTAB 2005).
502.02(c) Confidential Information	Amended text to inform reader that Board's standard protective order is in place for inter partes proceedings pending or commenced August 31, 2007. Amended text to add "materials designated as confidential in ESTTA" to excepted material not available for public inspection; and to indicate treatment of material filed without appropriate "confidential" designation.
	Added new Note 1, citing: 37 CFR § 2.116(g).
	Added to Note 2: 37 CFR §§ 2.27(d) and (e) and 2.126(c); added <i>Duke University v. Haggard Clothing Co.</i> , 54 USPQ2d 1443, 1445 (TTAB 2000); and deleted <i>Harjo v. Pro-Football, Inc.</i> , 50 USPQ2d 1705, 1714 (TTAB 1999).
	Deleted 37 CFR § 2.27(d); amended 2.126(d) to (c); and deleted Rany L. Simms, <i>Tips from the TTAB; Stipulated Protective Agreements</i> , 71 Trademark Rep. 653 (1981) in Note 3.
	Changed "see" reference to "cf." for <i>Harjo v. Pro-Football, Inc.</i> , 50 USPQ2d 1705, 1714 (TTAB 1999).

	Added to Note 5: <i>Duke University v. Haggard Clothing Co.</i> , 54 USPQ2d 1443, 1445 (TTAB 2000).
	In the penultimate paragraph, added an explanation regarding how to file “confidential” documents electronically; and in the last paragraph, added qualifier relating to private personal information.
502.03 Oral Hearings on Motions	The language in this subsection was modified to distinguish a formal oral hearing on a motion from a telephone conference regarding a motion.
	Added new Note 3, citing: 37 CFR § 2.127(a); and <i>Byer California v. Clothing for Modern Times</i> , 95 USPQ2d 1175 (TTAB 2010).
502.04 Determination of Motions	Amended 37 CFR § 2.127 to reflect rules changes.
	Amended the third paragraph to note that the Board does not grant uncontested motions as conceded until after sufficient time has been allowed for the filing of an opposition brief, and that Board will decide motion on its merits if a responsive argument is presented by written submission or in a telephone conference.
	Amended text to clarify that discovery, disclosures, and trial dates will not automatically be reset upon the filing of a motion; and that a party may incorporate a motion to extend as part of another motion. Added Note 4, citing 37 CFR § 2.120(a)(3) to support the practice that the party wishing that a deadline be reset should expressly request what dates it wishes to have reset.
	Added to Note 2: <i>International Finance Corp. v. Bravo Co.</i> , 64 USPQ2d 1597, 1599 (TTAB 2002).
502.05 Attorney’s Fees, etc., on Motions	Added <i>Kairos Institute of Sound Healing, LLC v. Doolittle Gardens, LLC</i> , 88 USPQ2d 1541, 1544 n.6 (2008) to Note 1.
502.06 Telephone and Pretrial Conferences	Section Heading only
502.06(a) Telephone Conferences	Amended 37 CFR § 2.120(i)(1) to reflect the rules changes.
	Noted that the issuance of an order may be deferred if the issues raised in the telephone conference require additional research or briefing.

	Added an excerpt from 37 CFR § 2.127(a) that is referenced later as authority for the Board to exercise its discretion to decide a motion by telephone conference.
	Noted that Board retains discretion to decide whether matter may be heard by telephone conference.
	In paragraph 2, amended to explain that telephone conferences could be appropriate to decide discovery motions and added a reference to TBMP § 413.
	In paragraph 2, noted that telephone conferences could be useful for providing progress reports regarding settlement or requests to further suspend proceedings.
	At the end of the third paragraph, amended the last paragraph to read that “telephone conferences may not be used as a means to supplement a motion or a related brief, and are not an opportunity to present oral arguments in support of fully briefed or written motions unless requested by the Board.”
	In the “Requesting a telephone conference” section, changed “responsible” to “assigned;” indicated that party served with written motion should act promptly to request a telephone conference; and split the third paragraph of that section into two paragraphs. In the third paragraph, added a sentence noting the requirement for the parties to provide a telephone number and email address.
	At the beginning of the fourth paragraph: noted that the Board may require additional briefing and that the Board could decide the motion in a telephone conference prior to the end of the briefing period citing 37 CFR § 2.127(a) and <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1175 (TTAB 2010) in a new Note 4. Added the following sentence: “Similarly, if a reply in support of a pending motion has not yet been filed, the moving party should be prepared to make its reply during the telephone conference.”
	Amended the information regarding expediting matters by explaining that practitioners should file motions through ESTTA and telephone the

	attorney rather than by hand-delivery. Also, added Note 5 citing 37 CFR § 2.195(d)(3) prohibiting filings by facsimile.
	Added a sentence noting the Board has the discretion to hear new issues.
	Noted who may attend and that the Board has the inherent authority to impose sanctions for failure to attend. Added a reference to TBMP § 527.03.
	Noted that decisions would be made available through TTABVue. Added “e-mail” and removed “fax” as a method of communicating the Board’s decision to the parties.
	Deleted former Notes 49-51 and 53-55.
502.06(b) Pretrial Conferences	Amended 37 CFR § 2.120(i)(2) to reflect rules changes.
	In Note 1, deleted the citation to Abraham Bogorad, <i>The Impact of the Amended Rules Upon Discovery Practice Before the Trademark Trial and Appeal Board</i> , 66 Trademark Rep., 28 (1976) and added 37 CFR § 2.120(i)(2).
	Added a cross reference to discovery conferences in TBMP §§ 408 and 413.
502.07 Fed. R. Civ. P. 11 Applicable	No changes.
503 Motion to Dismiss for Failure to State a Claim	Section Heading only; added quotation of Fed. R. Civ. P. 12(b)(6)
503.01 Time for Filing	In the second paragraph, added a statement explaining that a motion to dismiss tolls not only the time to answer, but also the time for the discovery conference citing new Note 4 referencing 37 CFR §§ 2.120(a)(2) and 2.127(d); 72 Fed. Reg. 42242, 42245 (August 1, 2007).
	In the third paragraph, added a statement that the defense of failure to state a claim upon which relief can be granted may be raised at trial.
503.02 Nature of Motion	References plausibility standard for evaluating motions to dismiss and deleted language that “dismissal for insufficiency is appropriate only if it appears certain that the plaintiff is entitled to no relief under any set of facts that could be proved in support of its claim.” Deletes citations to <i>Syndicat de la Parfumerie Francaise v. Scaglia</i> , 173 USPQ 383, 383 (TTAB 1972); <i>Flatley v. Trump</i> , 11 USPQ2d 1284, 1286 (TTAB 1989);

	<p><i>Caron Corp. v. Helena Rubinstein, Inc.</i>, 193 USPQ 113, 115 (TTAB 1976); <i>Anheuser-Busch, Inc. v. Martinez</i>, 185 USPQ 434, 435 (TTAB 1975); <i>Ritchie v. Simpson</i>, 170 F.3d 1092, 50 USPQ2d 1023, 1027 (Fed. Cir. 1999); <i>Young v. AGB Corp.</i>, 152 F.3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998); <i>Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.</i>, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993); <i>Stanspec Co. v. American Chain & Cable Company, Inc.</i>, 531 F.2d 563, 189 USPQ 420, 422 (CCPA 1976); and <i>Intellimedia Sports Inc. v. Intellimedia Corp.</i>, 43 USPQ2d 1203, 1205 (TTAB 1997); and <i>Kelly Services Inc. v. Greene's Temporaries Inc.</i>, 25 USPQ2d 1460, 1462 (TTAB 1992).</p>
	<p>Added <i>Bayer Consumer Care Ag v. Belmora LLC</i>, 90 USPQ2d 1587, 1590 (TTAB 2009) to Notes 1 and 2.</p>
	<p>Added new Note 3, citing: <i>Bell Atlantic Corp. v. Twombly</i>, 550 U.S. 554, 570, 127 S.Ct. 1955 (2007); <i>Ashcroft v. Iqbal</i>, 556 U.S. ___, 129 S.Ct. 1937 (2009).</p>
	<p>Added <i>Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.</i>, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993) to Note 4.</p>
	<p>At the end of the third paragraph of text, added an explanation that the Board may consider certain objective facts outside the pleading (e.g., the filing date, filing basis, priority date, publication date and applicant's name in an application subject to an opposition). Added new Note 5 citing <i>Compagnie Gervais Danone v. Precision Formulations LLC</i>, 89 USPQ2d 1251, 1256 (TTAB 2009) as support.</p>
	<p>Added <i>IdeasOne Inc. v. Nationwide Better Health</i>, 89 USPQ2d 1952, 1953 (TTAB 2009) and <i>Fair Indigo LLC v. Style Conscience</i>, 85 USPQ2d 1536, 1539 (TTAB 2007) to Note 6.</p>
	<p>In the last paragraph in the body of the subsection, changed Fed. R. Civ. P. 8(f) to 8(e) to reflect the rules changes and changed "liberally" to "so as to do justice" to reflect the rules change.</p>
503.03 Leave to Amend Defective Pleading	<p>Deleted 37 CFR §§ 2.107 and 2.115 to Note 1 and added Fed. R. Civ. P. 15(a)(1)(B) to Note 1.</p>

	Added new Note 2 citing <i>Fair Indigo LLC v. Style Conscience</i> , 85 USPQ2d 1536, 1537 (TTAB 2007).
	Added <i>Bayer Consumer Care AG v. Belmora LLC</i> , 90 USPQ2d 1587, 1590-1591 (TTAB 2009) to Note 4.
503.04 Matters Outside the Pleading Submitted on Motion to Dismiss	Added a new first paragraph to this subsection and new Note 1, citing 37 CFR § 2.127(e)(1) and <i>Qualcomm, Inc. v. FLO Corp.</i> , 93 USPQ2d 1768, 1769-70 (TTAB 2010), to explain that under amended Board rules a motion to dismiss accompanied by matters outside the pleading generally will not be converted into a motion for summary judgment.
	Added new Note 2, citing: 37 CFR § 2.127(e)(1); and <i>Compagnie Gervais Danone v. Precision Formulations, LLC</i> , 89 USPQ2d 1251, 1255-56 (TTAB 2009).
	Moved the discussion regarding pre-2007 rules change cases from the text to Note 3. Deleted Notes 4 and 5 and moved authorities cited therein into the text of the revised Note 3.
	In the revised Note 3, in the first series of authorities added Fed. R. Civ. P. 12(d), <i>Missouri Silver Pages Directory Publishing Corp., Inc. v. Southwestern Bell Media, Inc.</i> , 6 USPQ2d 1028, 1029 (TTAB 1988).
	In the revised Note 2, in the second series of authorities, Fed. R. Civ. P. 12(b) corrected to 12(d).
504 Motion for Judgment on the Pleadings	Section Heading only
504.01 Time for Filing	Added Fed. R. Civ. P. 12(h)(2)(B) to Note 4.
504.02 Nature of Motion	Added <i>Kraft Group LLC v. Harpole</i> , 90 USPQ2d 1837, 1840 (TTAB 2009); <i>Land O' Lakes Inc. v. Hugunin</i> , 88 USPQ2d 1957, 1958 (TTAB 2008); <i>Media Online Inc. v. El Clasificado Inc.</i> , 88 USPQ2d 1285, 1288 (TTAB 2008); <i>Ava Enterprises Inc. v. P.A.C. Trading Group, Inc.</i> , 86 USPQ2d 1659, 1660 (TTAB 2008) to Note 1.
	Added <i>Kraft Group LLC v. Harpole</i> , 90 USPQ2d 1837, 1840 (TTAB 2009); <i>Media Online Inc. v. El Clasificado Inc.</i> , 88 USPQ2d 1285, 1288 (TTAB 2008); <i>Ava Enterprises Inc. v. P.A.C. Trading</i>

	<i>Group, Inc.</i> , 86 USPQ2d 1659, 1660 (TTAB 2008) to Note 2; and updated Wright & Miller, Federal Practice and Procedure: Civil 3d § 1367 et seq. (2009) in Note 2 by changing “2d” to “3d” and 1990 to 2009.
	Added <i>Kraft Group LLC v. Harpole</i> , 90 USPQ2d 1837, 1840 (TTAB 2009); <i>Media Online Inc. v. El Clasificado Inc.</i> , 88 USPQ2d 1285, 1288 (TTAB 2008); <i>Ava Enterprises Inc. v. P.A.C. Trading Group, Inc.</i> , 86 USPQ2d 1659, 1660 (TTAB 2008) to Note 3; and updated Wright & Miller, Federal Practice and Procedure: Civil 3d § 1367 et seq. (2009) in Note 3 by changing “2d” to “3d.”
	Added <i>Kraft Group LLC v. Harpole</i> , 90 USPQ2d 1837, 1840 (TTAB 2009); <i>Media Online Inc. v. El Clasificado Inc.</i> , 88 USPQ2d 1285, 1288 (TTAB 2008); <i>Ava Enterprises Inc. v. P.A.C. Trading Group, Inc.</i> , 86 USPQ2d 1659, 1660 (TTAB 2008) to Note 4; and updated Wright & Miller, Federal Practice and Procedure: Civil 3d § 1367 et seq. (2009) in Note 4 by changing “2d” to “3d.”
	Added <i>International Telephone and Telegraph Corp. v. International Mobile Machines Corp.</i> , 218 USPQ 1024, 1026 (TTAB 1983) to Note 5; and updated Wright & Miller, Federal Practice and Procedure: Civil 3d § 1367 et seq. (2009) in Note 5 by changing “2d” to “3d” and 1990 to 2009.
504.03 Matters Outside the Pleadings Submitted on Motion for Judgment on Pleadings	Added a new first paragraph to this subsection and new Note 1, citing 37 CFR § 2.127(e)(1) and <i>Compagnie Gervais Danone v. Precision Formulations, LLC</i> , 89 USPQ2d 1251, 1255-56 (TTAB 2009), to explain that under amended Board rules a motion for judgment on the pleadings accompanied by matters outside the pleading filed prior to the serving party’s service of initial disclosures generally will not be converted into a motion for summary judgment.
	Added <i>Western Worldwide Enterprises Group, Inc. v. Qinqudao Brewery</i> , 17 USPQ2d 1137, 1139 n.5 (TTAB 1990) to Note 2.
	Changed Fed. R. Civ. P. 12(c) to 12(d) in Note 3.
	Added <i>Institut National Des Appellations d’Origine v. Brown-Forman Corp.</i> , 47 USPQ2d 1875, 1876 n.1 (TTAB 1998) to Note 4.

505 Motion for a More Definite Statement	Added reference to Fed. R. Civ. P. 12(e).
505.01 Nature of Motion	Updated citation to Wright & Miller, Federal Practice and Procedure: Civil 3d § 13776 (2009) in Notes 1-5 by changing “2d” to “3d” and 1990 to 2009.
505.02 Time for Filing	Added a new second paragraph indicating that when a motion for more definite statement regarding the complaint is filed, times for conducting the parties’ discovery conference and subsequent dates are effectively stayed.
	Added new Note 2, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 (August 1, 2007)
505.03 Failure to Obey Order for More Definite Statement	No changes.
506 Motion to Strike Matter From Pleading	Added reference to Fed. R. Civ. P. 12(f)
506.01 Nature of Motion	Added <i>Ohio State University v. Ohio University</i> , 51 USPQ2d 1289, 1292 (TTAB 1999) and <i>Internet Inc. v. Corporation for National Research Initiatives</i> , 38 USPQ2d 1435, 1438 (TTAB 1996) to Note 1.
	Added <i>Ohio State University v. Ohio University</i> , 51 USPQ2d 1289, 1292 (TTAB 1999) to Note 4 and deleted “See also Beth A. Chapman, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff, 81 Trademark Rep. 302, 302 (1991).”
	Updated citation to Wright & Miller, Federal Practice and Procedure: Civil 3d § 1381 (2009) by changing “2d” to “3d” in Note 3.
	Deleted from Note 7: “ <i>Textron, Inc. v. Gillette Co.</i> , 180 USPQ 152, 154 (TTAB 1973) (allegations in answer which merely reiterated denial of likelihood of confusion without adding anything of substance thereto stricken as redundant); <i>Gould Inc. v. Sanyo Electric Co.</i> , 179 USPQ 313, 314 (TTAB 1973) (affirmative defense attacking validity of plaintiff’s pleaded registration stricken); <i>S. C. Johnson & Son, Inc. v. GAF Corp.</i> , 177 USPQ 720, 720 (TTAB 1973) (affirmative defense of failure to state a claim upon which relief can be granted stricken since complaint did state such a claim); <i>McCormick &</i>

	<p><i>Co. v. Hygrade Food Products Corp.</i>, 124 USPQ 16 (TTAB 1959) (recital of evidentiary material, namely, list in defendant's pleading of asserted third-party registrants and users, stricken).</p> <p><i>Compare Leon Shaffer Golnick Advertising, Inc. v. William G. Pendill Marketing Co.</i>, 177 USPQ 401, 402 (TTAB 1973) (allegations pertinent to the issues in the case not stricken)."</p>
506.02 Time for Filing	Added <i>Order of Sons of Italy in America v. Profumi Fratelli Nostra AG</i> , 36 UPSQ2d 1221, 1222 (TTAB 1995) to Note 1.
	Added an explanation in the first paragraph implementing a new procedure: when a motion to strike matter from a pleading is filed before the discovery conference is held, the issues raised in the motion may be one of the subjects of the discovery conference, if the parties request Board participation therein, and the assigned attorney will participate in the conference to ensure the resolution of the matter, including potentially striking matter from a pleading during a discovery conference.
	Added <i>Order of Sons of Italy in America v. Profumi Fratelli Nostra AG</i> , 36 UPSQ2d 1221, 1222 (TTAB 1995) to Note 2.
	Added <i>Order of Sons of Italy in America v. Profumi Fratelli Nostra AG</i> , 36 UPSQ2d 1221, 1222 (TTAB 1995) to Note 3.
	Updated citation to Wright & Miller, Federal Practice and Procedure: Civil 3d § 13776 (2009) in Note 4 by changing "2d" to "3d" and 1990 to 2009.
506.03 Exhibits Attached to Pleadings	Noted that current printouts of information from the electronic records of the Office of a plaintiff's registrations filed by the plaintiff with its complaint may be considered in connection with a motion to strike.
507.01 Motion to Amend Pleading	Section Heading only
	Amended Fed. R. Civ. P. 15(a) and (b) to reflect the April 30, 2007 amendment.
	In the third paragraph of text, noted that in Board proceedings, there are two exceptions to the general rule that pleadings may be liberally amended: (1) after the close of the time for filing an opposition, the notice of opposition may not be

	amended to add to the goods or services opposed; and (2) an opposition against an application filed under Trademark Act § 66(a), 15 U.S.C. § 1141f(a), may not be amended to add a new ground for opposition.
	Amended Note 1 to add <i>Fair Indigo LLC v. Style Conscience</i> , 85 USPQ2d 1536, 1539 (TTAB 2007) and to delete Beth A. Chapman, <i>TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302, 302 (1991).
	Amended Note 3 to reference the entirety of 37 CFR § 2.107.
	Amended Note 4 to add 37 CFR § 2.107(b) and to delete Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act; Final Rule, published in the Federal Register on September 26, 2003 at 68 FR 55748, specifically, summary of amendments at 55757.
507.02 Amendments – General Rule – Fed. R. Civ. P. 15(a)	In the first paragraph, deleted “at any time before a responsive pleading is served” to “within 21 days after serving it”; and amended dates for amending pleadings to which no responsive pleading is permitted to reflect 2007 changes in Fed. R. Civ. P. 15.
	In the second paragraph of the text added the statement that after the time for filing an opposition expires, the notice of opposition to a Trademark Act § 66 application may not be amended to add any goods or services. In the supporting Note 7, inserted 37 CFR § 2.107(b) and deleted the reference to Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act; Final Rule, published in the Federal Register on September 26, 2003 at 68 FR 55748, 55757.
	At the end of the third paragraph of the text, added the statement that the non-moving party should not argue against a motion for leave to amend because the non-moving party does not believe that the moving party will be able to prove the additional claim or allegations at trial.
	Added <i>Zanella Ltd. v. Nordstrom Inc.</i> , 90 USPQ2d 1758, 1759 (TTAB 2008); <i>Media Online Inc. v. El Clasificado Inc.</i> , 88 USPQ2d 1285, 1286 (TTAB 2008); <i>Black & Decker Corp. v. Emerson Electric Co.</i> , 84 USPQ2d 1482, 1486

	(TTAB 2007); <i>Hurley International L.L.C. v. Volta</i> , 82 USPQ2d 1339, 1341 (TTAB 2007); <i>Karsten Manufacturing Corp. v. Editoy AG</i> , 79 USPQ2d 1783, 1786 (TTAB 2006) to Note 4.
	Deleted from Note 4: “ <i>American Hygienic Labs, Inc. v. Tiffany & Co.</i> , 228 USPQ 855 (TTAB 1986); <i>Buffett v. Chi-Chi's, Inc.</i> , 226 USPQ 428 (TTAB 1985); <i>Caron Corp. v. Helena Rubenstein, Inc.</i> , 193 USPQ 113 (TTAB 1976); <i>Anheuser-Busch, Inc. v. Martinez</i> , 185 USPQ 434 (TTAB 1975); <i>Cool-Ray, Inc. v. Eye Care, Inc.</i> , 183 USPQ 618 (TTAB 1974); <i>Mack Trucks, Inc. v. Monroe Auto Equipment Co.</i> , 182 USPQ 511 (TTAB 1974); <i>Johnson & Johnson v. Cenco Medical/Health Supply Corp.</i> , 177 USPQ 586 (Comm'r 1973); <i>American Optical Corp. v. American Olean Tile Co.</i> , 168 USPQ 471 (TTAB 1971). See also Beth A. Chapman, <i>TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302, 305 (1991).”
	Added <i>Hurley International L.L.C. v. Volta</i> , 82 USPQ2d 1339, 1341 (TTAB 2007); and <i>Karsten Manufacturing Corp. v. Editoy AG</i> , 79 USPQ2d 1783, 1786 (TTAB 2006) to Note 5.
	Deleted “ <i>Mack Trucks, Inc. v. Monroe Auto Equipment Co.</i> , 182 USPQ 511, 511-512 (TTAB 1974); and <i>Johnson & Johnson v. Cenco Medical/Health Supply Corp.</i> , 177 USPQ 586, 588 (Comm'r 1973)” from Note 5.
	Added at the end of Note 6 the following case citation: <i>But see UMG Recordings, Inc. v. Charles O'Rourke</i> , 92 USPQ2d 1042, 1045 n.12 (TTAB 2009) (if a party pleads a pending application in the notice of opposition, it may make the resulting registration of record at trial without having to amend its pleading to assert reliance on the registration).
	Deleted from Note 8: “See also, <i>Microsoft Corp. v. Qantel Business Systems Inc.</i> , 16 USPQ2d 1732, 1734 (TTAB 1990) (petitioner permitted to add allegation concerning respondent's assertion of infringement to support standing). [NOTE: This case was overruled by <i>Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG</i> , 34 USPQ2d 1266 (TTAB 1994), to the extent that it held that Trademark Act § 18, 15 U.S.C. § 1068,

	may be invoked only when tied to a properly pleaded ground for opposition or cancellation.]”.
507.02 Motion to Amend Pleading: Amendments – General Rule – Fed. R. Civ. P. 15(a)	Added <i>Giersch v. Scripps Networks Inc.</i> , 85 USPQ2d 1306, 1309 (TTAB 2007); <i>Hurley International L.L.C. v. Volta</i> , 82 USPQ2d 1339, 1341 (TTAB 2007) to Note 9.
507.02 Motion to Amend Pleading: Amendments – General Rule – Fed. R. Civ. P. 15(a)	Deleted from Note 9: “ <i>Midwest Plastic Fabricators Inc. v. Underwriters Laboratories Inc.</i> , 5 USPQ2d 1067, 1069 (TTAB 1987) (defense of unclean hands insufficient because allegations were either unclear, non-specific, irrelevant to the defense or merely conclusory; defense of laches not available where ground is failure to control use of a certification mark); <i>American Hygienic Labs, Inc. v. Tiffany & Co.</i> , 228 USPQ 855, 859 (TTAB 1986) (proposed amendment to add 2(d) claim denied as legally insufficient); and <i>W.R. Grace & Co. v. Arizona Feeds</i> , 195 USPQ 670 (Comm’r 1977).”
	Deleted “See also Beth A. Chapman, <i>TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302, 307 (1991)” from Note 11.
507.02(a) Timing of Motion to Amend Pleading – In General	At the end of the second paragraph of text, added an explanation that the reopening of discovery pursuant to motion to amend the pleading may not be necessary when the information regarding the claim or allegation is within the knowledge or possession of the non-moving party.
	Added <i>Media Online Inc. v. El Clasificado Inc.</i> , 88 USPQ2d 1285, 1286 (TTAB 2008); <i>Black & Decker Corp. v. Emerson Electric Co.</i> , 84 USPQ2d 1482, 1486 (TTAB 2007) to Note 1.
507.02(a) Timing of Motion to Amend Pleading – In General	Deleted “ <i>Midwest Plastic Fabricators Inc. v. Underwriters Laboratories Inc.</i> , 12 USPQ2d 1267 (TTAB 1989), <i>aff’d</i> , 906 F.2d 1568, 15 USPQ2d 1359 (Fed. Cir. 1990) (where plaintiff moved to amend after close of its testimony period, motion denied as untimely to extent it sought amendment under Rule 15(a)); <i>Flatley v. Trump</i> , 11 USPQ2d 1284 (TTAB 1989) (proceedings still in the discovery stage); <i>Buffett v. Chi Chi’s, Inc.</i> , 226 USPQ 428 (TTAB 1985) (no substantial prejudice to applicant by allowance of amendment where proceeding remained in a

	<p>fairly early stage); <i>Long John Silver's, Inc. v. Lou Scharf Inc.</i>, 213 USPQ 263 (TTAB 1982) (opposer's motion to amend to rely on eight additional marks, shortly after the close of the discovery period, denied where opposer knew, or should have known, of the existence of the marks at the time the opposition was filed, and the discovery period had already been extended several times at opposer's request); <i>Caron Corp. v. Helena Rubenstein, Inc.</i>, 193 USPQ 113 (TTAB 1976) (neither party had as yet taken testimony); <i>Anheuser-Busch, Inc. v. Martinez</i>, 185 USPQ 434 (TTAB 1975) (proceeding was still in the pre-trial stage); <i>Cool-Ray, Inc. v. Eye Care, Inc.</i>, 183 USPQ 618 (TTAB 1974) (trial period had not yet commenced and no prejudice to applicant); <i>Mack Trucks, Inc. v. Monroe Auto Equipment Co.</i>, 182 USPQ 511 (TTAB 1974) (no testimony had as yet been taken); <i>American Optical Corp. v. American Olean Tile Co.</i>, 168 USPQ 471 (TTAB 1971) (applicant's motion to amend its pleading after the close of opposer's testimony period, but before the opening of applicant's testimony period, permitted); and Beth A. Chapman, <i>TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i>, 81 Trademark Rep. 302, 305 (1991)" from Note 1.</p>
507.02(a) Timing of Motion to Amend Pleading – In General	<p>Added <i>Media Online Inc. v. El Clasificado Inc.</i>, 88 USPQ2d 1285, 1286 (TTAB 2008); <i>Black & Decker Corp. v. Emerson Electric Co.</i>, 84 USPQ2d 1482, 1486 (TTAB 2007); <i>Karsten Manufacturing Corp. v. Editoy AG</i>, 79 USPQ2d 1783, 1786 (TTAB 2006) to Note 2.</p>
	<p>Added <i>Black & Decker Corp. v. Emerson Electric Co.</i>, 84 USPQ2d 1482, 1486 (TTAB 2007) to Note 3 and deleted Beth A. Chapman, <i>TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i>, 81 Trademark Rep. 302, 305 (1991) from Note 3.</p>
507.02(b) Timing of Motion to Add Counterclaim	<p>Added <i>Zanella Ltd. v. Nordstrom Inc.</i>, 90 USPQ2d 1758, 1759 (TTAB 2008); <i>Turbo Sportswear Inc. v. Marmot Mountain Ltd.</i>, 77 USPQ2d 1152, 1154 (TTAB 2005) to Note 2 and deleted Beth A. Chapman, <i>TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i>, 81 Trademark Rep. 302, 306 (1991) from Note 2.</p>

507.03 Amendments to Conform to the Evidence – Fed. R. Civ. P. 15(b)	Added reference to Fed. R. Civ. P. 15(b)(1) and (2).
507.03(a) During Trial After Objection to Trial Evidence	Clarified that motion for leave to amend should be promptly filed by party offering the evidence after objection is made by an adverse party.
507.03(b) To Add Issues Tried by Express or Implied Consent	At the end of the second paragraph of text, added the following: “Fairness dictates whether an issue has been tried by consent – there must be an absence of doubt that the non-moving party must be aware that the issue is being tried.”
	Added <i>Morgan Creek Productions Inc. v. Foria International Inc.</i> , 91 USPQ2d 1134, 1138 (TTAB 2009) in Note 1.
	Added <i>Citigroup Inc. v. Capital City Bank Group, Inc.</i> , 94 USPQ2d 1645 (TTAB 2010); <i>Nextel Communications, Inc. v. Motorola, Inc.</i> , 91 USPQ2d 1393, 1399 (TTAB 2009); and <i>DC Comics v. Pan American Grain Mfg. Co.</i> , 77 USPQ2d 1220, 1223 (TTAB 2005) to Note 2.
	Deleted <i>Riceland Foods Inc. v. Pacific Eastern Trading Corp.</i> , 26 USPQ2d 1883, 1884 (TTAB 1993) (no express or implied consent to try certain issues); <i>Reflange Inc. v. R-Con International</i> , 17 USPQ2d 1125 (TTAB 1990) (permitted to amend answer after trial to add an affirmative defense that was in fact tried); <i>Laboratoires du Dr. N.G. Payot Etablissement v. Southwestern Classics Collection Ltd.</i> , 3 USPQ2d 1600 (TTAB 1987) (motion to amend at time of final briefing granted); and <i>Beth A. Chapman, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302, 309 (1991) from Note 2.
	Added <i>Morgan Creek Productions Inc. v. Foria International Inc.</i> , 91 USPQ2d 1134, 1138 (TTAB 2009) and <i>H.D. Lee Co. v. Maidenform Inc.</i> , 87 USPQ2d 1715, 1720-1721 (TTAB 2008) in Note 3 and deleted <i>Beth A. Chapman, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302, 308 (1991) from Note 3.
	Added New Note 4, citing: <i>Safer Inc. v. OMS Investments Inc.</i> , 94 USPQ2d 1031 (TTAB 2010); and <i>Morgan Creek Productions Inc. v. Foria International Inc.</i> , 91 USPQ2d 1134, 1139 (TTAB

	2009).
	Deleted <i>Beth A. Chapman, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff</i> , 81 Trademark Rep. 302, 309 (1991) from Note 5.
508 Motion for Default Judgment for Failure to Answer	In the first paragraph, changed 20 days to “time to show cause” to conform with Board practice which is 30 days.
	Added a new penultimate paragraph explaining that defendant’s entry into default stays the time for the parties to conduct a discovery conference and that in instances where an order to show cause is discharged, the Board will reset the appropriate dates. Added Note 4 citing <i>Miscellaneous Changes to Trademark Trial and Appeal Board Rules</i> , 72 Fed. R. 42242, 42245 (August 1, 2007) in support.
509 Motion to Extend Time; Motion to Reopen Time	Amended Fed. R. Civ. P. 6(b) to reflect the April 30, 2007 amendment.
	Amended 37 CFR § 2.120(a) to reflect rules changes.
	Amended 37 CFR § 2.121 to reflect the rules changes.
	Amended 37 CFR § 2.127(a) to reflect rules changes.
509.01 Nature of Motions	At the end of the text, added an explanation noting that “An exception to the usual requirement for showing excusable neglect when the period for taking an action has expired arises when a defendant is in default because its time to answer has expired. In such circumstances, the showing required is good cause to excuse the default.”
	In Note 1, added 37 CFR § 2.127(a) noting that the time for filing a reply brief will not be extended.
509.01(a) Motions to Extend Time	In the fourth paragraph of text, added a sentence explaining that if a defendant’s motion to extend its time to answer is granted, the Board will reset all of the relevant deadlines, including the time for the discovery conference, disclosures, discovery and trial.
	Added a new fifth paragraph of text noting that after answer has been filed, Board is unlikely to find good cause for a motion to extend the deadline for the parties to conduct the required

	discovery conference when the basis for the motion is the existence of settlement discussions. Added a new Note 6 citing <i>Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767, 1767 n.1 (TTAB 2008), citing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 (August 1, 2007) as authority.
	Added a new sixth paragraph of text noting that the time for filing a reply brief will not be extended. Added Note 7 citing 37 CFR § 2.127(a) as authority.
	Added <i>SFW Licensing Corp. v. Di Pardo Packing Ltd.</i> , 60 USPQ2d 1372, 1373 (TTAB 2001) and <i>Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducali SCRL</i> , 59 USPQ2d 1383, (TTAB 2001) to Note 1.
	Added <i>National Football League v. DNH Management LLC</i> , 85 USPQ2d 1852, 1854 (TTAB 2008) to Note 2.
	Deleted “ <i>Johnston Pump/General Valve Inc. v. Chromalloy American Corp.</i> , 10 USPQ2d 1671, 1676 (TTAB 1988); <i>Luehrmann v. Kwik Kopy Corp.</i> , 2 USPQ2d 1303 (TTAB 1987) (desire to conduct follow-up discovery is not good cause for extension of discovery period where party seeking extension did not serve initial discovery requests until late in discovery period) and <i>Sunkist Growers, Inc. v. Benjamin Ansehl Company</i> , 229 USPQ 147 (TTAB 1985) (opposer's motion to compel having been granted, it was reasonable to allow additional time, albeit less than requested, for opposer to complete discovery before proceeding with testimony); <i>Consolidated Foods Corp. v. Ferro Corp.</i> , 189 USPQ 582 (TTAB 1976); <i>Neville Chemical Co. v. Lubrizol Corp.</i> , 184 USPQ 689 (TTAB 1975); and <i>Ortho Pharmaceutical Corp. v. Schattner</i> , 184 USPQ 556 (TTAB 1975)” from Note 4.
	Added <i>National Football League v. DNH Management LLC</i> , 85 USPQ2d 1852, 1854 (TTAB 2008) to Note 5.
509.01(b) Motions to Reopen Time	Section Heading only

509.01(b)(1) In General	In first paragraph of text, added a cross reference to TBMP § 508 regarding the requirement to show good cause to file a late answer.
	Added <i>Dating DNA LLC v. Imagini Holdings Ltd.</i> , 94 USPQ2d 1889, 1892-3 (TTAB 2010).
	Added <i>Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.</i> , 65 USPQ2d 1701, 1702 (TTAB 2002) and <i>Giersch v. Scripps Networks Inc.</i> , 85 USPQ2d 1306, 1307-1308 (TTAB 2007) to Note 3.
	Deleted “ <i>Cf. Netcore Technologies, Inc. v. Firstwave Technologies, Inc.</i> , ___ USPQ2d ___, 2001 WL 243440 (TTAB 2001) (attorney’s unwarranted and untimely request to withdraw from representation of party may not be used as subterfuge to obtain a reopening of time to which the party is not otherwise entitled)” from Note 6.
	Added with the <i>Cf.</i> signal <i>General Motors Corp. v. Cadillac Club Fashions Inc.</i> , 22 USPQ2d 1933, 1936 (TTAB 1992) to Note 6.
509.01(b)(2) To Introduce Newly Discovered Evidence	Added <i>Harjo v. Pro-Football, Inc.</i> , 45 USPQ2d 1789, 1790 (TTAB 1998) to Note 1.
	Added <i>L.C. Licensing Inc. v. Berman</i> , 86 USPQ2d 1883, 1886-1887 (TTAB 2008) to Note 2.
509.02 Form and Determination of Motions to Extend or Reopen	At the end of the first paragraph of text, added a statement explaining that after answer has been filed, the Board is unlikely to grant a consented motion to extend the time for the discovery conference based on settlement negotiations. Added Note 1 citing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 (August 1, 2007) as authority.
	Added a new second paragraph in the text noting that when the parties file a stipulation or consented motion to extend or reopen the defendant’s time to file an answer, they should include the times for all the subsequent dates.
	Amended to indicate that disclosure deadlines will be reset when testimony or discovery periods are reset.
	Added a new paragraph noting that when the parties agree to a new schedule of dates and file for approval using ESTTA, the system will prompt the filer to enter new deadlines that will allow the

	system to generate a new trial order.
	Deleted the original third paragraph of text because it no longer reflects current practice.
	Amended text to indicate that Board has discretion to suspend proceedings, sua sponte, for up to six months, and added statement that Board may request a progress report on the status of the parties' settlement discussions and periodically thereafter, citing, by comparison, <i>Shen Manufacturing Co. v. Ritz Hotel Ltd</i> , 393 F.3d 1238, 73 USPQ2d 1350, 1353 n.2 (Fed. Cir. 2004) in new Note 4.
	Explained that a motion will not be granted as conceded until after the passage of sufficient time for the filing of a responsive brief, except that responding party may be excused from filing a responsive brief in the case of a telephone conference, and that if the motion is contested, the Board will decide the motion on its merits.
	Clarified that party must not assume a motion to extend or reopen will be granted as a matter of course. Also added disclosures to periods that may be requested be reset.
	Explained that the resetting of the closing date for discovery will reset the date for expert disclosure, pretrial disclosures and testimony periods.
	Amended text to reference the resetting of discovery as well as trial dates and added text to inform practitioners that requests to reset dates may be included in a pending motion. Added new Note 10 citing 37 CFR § 2.120(a)(3) as illustrative.
510 Motion to Suspend; Motion to Resume	Amended 37 CFR § 2.120(e)(2) to reflect rules changes.
510.01 In General	Added <i>Schering-Plough Animal Health Corp. v. Aqua Gen AS</i> , 90 USPQ2d 1184, 1185 (TTAB 2009); and <i>Carrini, Inc. v. Carla Carini, S.R.L.</i> , 57 USPQ2d 1067, 1071 (TTAB 2000) to Note 1.
510.02 Suspension Pending Outcome of Another Proceeding; Resumption	Section Heading only.
510.02(a) Suspension	Added reference to filing of civil action via ESTTA, and that ESTTA form requires filer to certify that the adverse party has consented to suspension of Board proceedings pending the outcome of the civil action.

	Deleted David B. Allen, <i>TIPS FROM THE TTAB: Impact of TTAB Decisions in Civil Litigation: The Alphonse-Gaston Act</i> , 74 Trademark Rep. 180 (1984) from Note 1.
	Deleted Marc A. Bergsman, <i>TIPS FROM THE TTAB: The Effect of Board Decisions in Civil Actions; Claim Preclusion and Issue Preclusion in Board Proceedings</i> , 80 Trademark Rep. 540 (1990); and David B. Allen, <i>TIPS FROM THE TTAB: Impact of TTAB Decisions in Civil Litigation: The Alphonse-Gaston Act</i> , 74 Trademark Rep. 180 (1984) from Note 2.
	Clarified parenthetical to <i>The Tamarkin Co. v. Seaway Food Town Inc.</i> , 34 USPQ2d 1587, 1592 (TTAB 1995) in Note 3.
	Deleted old Note 10, citing David B. Allen, <i>TIPS FROM THE TTAB: Impact of TTAB Decisions in Civil Litigation: The Alphonse-Gaston Act</i> , 74 Trademark Rep. 180 (1984).
	Deleted old Note 13, citing David B. Allen, <i>TIPS FROM THE TTAB: Impact of TTAB Decisions in Civil Litigation: The Alphonse-Gaston Act</i> , 74 Trademark Rep. 180 (1984).
510.02(b) Resumption	Language added that after decision in civil action, if one party moves for judgment on basis of the final decision in the civil action, the Board will issue a show cause order. Also changed date that Board will check on the status of pending civil action from two years to one year after suspension.
510.03 Suspension for Other Reasons; Resumption	Section Heading only
510.03(a) Suspension	In the section captioned "Upon motion or upon stipulation," added information on suspension after answer under new rules, to advise reader that mere desire to engage in settlement discussions is unlikely to constitute good cause for suspension filed after answer but because discovery conference. Added new paragraph advising that indefinite suspensions will not be granted, that Board may require parties to submit a detailed progress report, and that Board may deny suspension requests, together with new Note 4 citing by comparison, <i>Shen Manufacturing Co. v. Ritz Hotel Ltd</i> , 393 F.3d 1238, 73 USPQ2d

	1350, 1353 n. 2 (Fed. Cir. 2004).
	In the section captioned “Bankruptcy,” added a statement that the Board may suspend a proceeding based on a plaintiff’s bankruptcy for good cause shown.
	In the section captioned “Motion to compel,” added “initial disclosures” and “expert testimony disclosures” to types of motions to compel that will invoke a Board suspension order. Also explained when the time period for making pretrial disclosures will be suspended.
	Changed the word “Testimony” in section captioned “Testimony depositions on written questions” to “Testimonial” and added a new section captioned “Discovery depositions on written questions” to indicate that upon notification, the Board will suspend proceedings or extend relevant dates to allow for the orderly completion of a deposition upon written questions.
	Added new Note 3, citing <i>Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767, 1767 n.1 (TTAB 2008). See also Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 (August 1, 2007).
	In the section captioned “Settlement negotiations,” explained that at the time the Board suspends a case for settlement, the Board will normally provide a trial schedule that will automatically go into effect upon resumption. Deleted statements that reflect former practice of indefinite suspension.
	Added citation to <i>Super Bakery Inc. v. Benedict</i> , 96 USPQ2d 1134, 1135 (TTAB 2010) in Notes 9, 10, and 11.
510.03(b) Resumption	In the section captioned “Bankruptcy,” changed date that Board will check on the status of pending bankruptcy from “every two years” to “once a year.”
	In the section captioned “Withdrawal of counsel,” clarified that where proceedings have been suspended and a party appoints new counsel or advises the Board that it will represent itself pro se, the Board will resume proceedings.
	In the section captioned “Potentially dispositive

	motion,” added that Board will reset appropriate dates in order resuming proceeding, following decision on motion that does not dispose of the case.
511 Motion to Consolidate	Amended Fed. R. Civ. P. 42(a) to reflect rules changes.
	Amended third paragraph to delete “The oldest (i.e., first-filed) of the consolidated cases is treated as the “parent” case.”
	Amended fourth paragraph to add that parties represented by more than one attorney should provide one point of contact with the Board.
	Amended fifth paragraph to indicate that pleadings and judgment are entered separately in each consolidated proceeding and that Board will reset all dates (not just trial dates) upon consolidation.
	Added information on consolidation of cases instituted after November 1, 2007 with those filed prior thereto.
	Added <i>M.C.I. Foods Inc. v. Bunte</i> , 86 USPQ2d 1044, 1046 (TTAB 2008) to Note 1.
	Added <i>Dating DNA LLC v. Imagini Holdings Ltd.</i> , 94 USPQ2d 1889 (TTAB 2010) to Note 2 and deleted Wright & Miller, <i>Federal Practice and Procedure</i> : Civil 3d § 2383 (2009) from Note 2.
	Added to Note 5: <i>Dating DNA LLC v. Imagini Holdings Ltd.</i> , 94 USPQ2d 1889 (TTAB 2010) (motion to consolidate granted); <i>Venture Out Properties LLC v. Wynn Resorts Holdings LLC</i> , 81 USPQ2d 1887, 1889 (TTAB 2007).
	Deleted from Note 5: Wright & Miller, <i>Federal Practice and Procedure</i> : Civil 3d § 2383 (2009); <i>Bigfoot 4x4 Inc. v. Bear Foot Inc.</i> , 5 USPQ2d 1444 (TTAB 1987) (joint motion); <i>Federated Department Stores, Inc. v. Gold Circle Insurance Co.</i> , 226 USPQ 262 (TTAB 1985) (motion); and <i>Plus Products v. Medical Modalities Associates, Inc.</i> , 211 USPQ 1199 (TTAB 1981), set aside on other grounds and new decision entered, 217 USPQ 464 (TTAB 1983).
511 Motion to Consolidate	Added <i>Dating DNA LLC v. Imagini Holdings Ltd.</i> , 94 USPQ2d 1889 (TTAB 2010) to Note 9. Deleted Wright & Miller, <i>Federal Practice and Procedure</i> : Civil 3d § 2382 (2009) from Note 9.
512 Motion to Join or	Section Heading only.

Substitute	
512.01 Assignment of Mark	In the second paragraph, inserted “with the USPTO” and “in the Board proceeding record” to indicate that proof of assignment must be noticed to the Board.
	Added <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1955 n.1 (TTAB 2008) to Note 1; added new Note 8, citing <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1434 n.1 (TTAB 2007); and added <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1434 n.2 (TTAB 2007) to Note 9.
	Added new Note 15, citing: <i>Amazon Technologies Inc. v. Wax</i> , 95 USPQ2d 1865, 1871 (TTAB 2010).
512.02 Change of Name	No changes made.
512.03 Issuance of Registration to Assignee, or in New Name	Corrected “Assignment Division” to “Assignment Services Division” in paragraph three; added new Note 1, citing: <i>Smart Inventions Inc. v. TMB Products LLC</i> , 81 USPQ2d 1383, 1384 n.3 (TTAB 2006).
512.04 Misidentification	Added references to Fed. R. Civ. P. 15(a)(1) and (2); added reference to 15 U.S.C. § 1063(a).
	Clarified statement in first paragraph indicating that Board may allow amendment of complaint where plaintiff can establish misidentification through mistake, by deleting “When it is shown to the satisfaction of the Board that a party in whose name a Board proceeding complaint was filed was misidentified therein by mistake” and replacing it with statement identifying plaintiff as the party that has made the mistake.
	Deleted original paragraph two, which did not identify which party misidentified applicant in an application (or registration) which is the subject of a Board proceeding, and replaced the paragraph with new paragraph two, identifying plaintiff as the mistaken party and clarifying that plaintiff may only correct a misidentification within the time for filing an opposition (in the case of an opposition) and within the time for petitioning to cancel the intended registration (in a cancellation action).
	Added a new paragraph three explaining when an applicant may correct a defect in identifying itself in the application.
	Added <i>Great Seats Ltd. v. Great Seats Inc.</i> , 84

	USPQ2d 1235, 1240 (TTAB 2007) to Note 4.
513 Motion to Withdraw as Representative; Petition to Disqualify	Section Heading only.
513.01 Motion to Withdraw as Representative	Deleted “ <i>Netcore Technologies, Inc. v. Firstwave Technologies, Inc.</i> , ___ USPQ2d ___, 2001 WL 243440 (TTAB 2001) from Note 1.
	Deleted “ <i>Netcore Technologies, Inc. v. Firstwave Technologies, Inc., supra</i> ” from Note 3
	Deleted “ <i>Netcore Technologies, Inc. v. Firstwave Technologies, Inc., supra</i> ” from Note 4.
	Added <i>CTRL Systems Inc. v. Ultraphonics of North America Inc.</i> , 52 USPQ2d 1300 (TTAB 1999) to Note 5.
513.02 Petition to Disqualify	Replaced reference to 37 CFR § 10.130(b) with reference to 37 CFR § 11.19(c) (formerly 10.19(c)); and replaced reference in second paragraph to “37 CFR §§ 10.130-10.170” with reference to 37 CFR §§ 11.19-11.60; also replaced reference to “37 CFR § 10.130(b)” with 37 § CFR 11.19(c).
	Amended text to indicate that Chief Administrative Trademark Judge may delegate his/her responsibility to decide petitions to a Board judge or attorney for signature by the Chief Administrative Trademark Judge.
514.01 In General	Added information in the first paragraph to advise reader that while an unconsented substantive amendment is generally deferred to final decision or summary judgment, if applicant consents to entry of judgment with respect to the broader scope of goods/services, an amendment to delete goods/services from the application may be approved on motion prior to trial. Added new Note 2 in support, citing <i>Enbridge Inc. v. Excelerate Energy Ltd. Partnership</i> , 92 USPQ2d 1537, 1539 n.3 (TTAB 2009) (motion to amend identification of goods and dates of use deferred until final hearing); <i>Space Base Inc. v. Stadis Corp.</i> , 17 USPQ2d 1216 (TTAB 1990) (motion to amend identification of goods deferred); <i>Fort Howard Paper Co. v. C.V. Gambina Inc.</i> , 4 USPQ2d 1552 (TTAB 1987) (motion to amend dates of use deferred); and <i>Mason Engineering & Design Corp. v. Mateson Chemical Corp.</i> , 225 USPQ 956, 957 n.4 (TTAB 1985); added new

	Note 3, citing <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1435 (TTAB 2007) in Note 3.
	In the fourth paragraph, deleted references to Trademark Act § 66(a) registrations.
	Amended seventh paragraph to include further explanation regarding amendments made through WIPO to Trademark Act § 66(a) applications and registrations, and added a new Note 9 citing 37 CFR § 2.134(b) in support.
	In paragraph eight, deleted references to Trademark Act § 66(a) registrations, including the statement that Requests to record changes to a Trademark Act § 66(a) registration must be filed with the International Bureau
	Deleted old footnote 250, which read as follows: "Amendments to 66(a) registrations are not made under Section 7 of the Trademark Act. Requests to record changes to 66(a) registrations must be filed with the International Bureau. See 37 CFR §§ 7.22 and 7.25. Although Trademark Rule 7.25 specifically exempts only a "request for extension of protection" (a 66(a) application) from application of certain rules in part 2 of 37 CFR, including Rules 2.172 (surrender for cancellation), 2.160-2.166 (Section 8 affidavits), and 2.173 (amendment of registrations), it is clear from the nature of the excepted provisions that Rule 7.25 is intended to apply to a 66(a) registration as well as a 66(a) application."
	Deleted old footnote 251, which read as follows: "The mark in a 66(a) application or registration cannot be amended. See 37 CFR § 2.72 providing only for amendments to the mark in Section 1 and 44 applications and the International Bureau's Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol, Para. B.II.69.02 (2002) at www.wip.int/madrid/en/guide . See also Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act; Final Rule, published in the Federal Register on September 26, 2003 at 68 FR 55748, 55756."
	Added <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1435 (TTAB 2007) to Note 5 and

	deleted Louise E. Rooney, <i>TIPS FROM THE TTAB: Rule 2.133 Today</i> , 81 Trademark Rep. 408 (1991) from Note 5.
	Deleted old footnote 255, which read as follows: "Requests to record amendments to 66(a) registrations are filed with the International Bureau, not with Post Registration. See 37 CFR § 7.22 and Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act; Final Rule, published in the Federal Register on September 26, 2003 at 68 FR 55748, 55756."
	Added <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1435 (TTAB 2007) to Note 7.
	Added <i>Hachette Filipacchi Presse v. Elle Belle LLC</i> , 85 USPQ2d 1090, 1095 (TTAB 2007) to Note 8; changed "examining operation" to "Trademark Examining Operation."
514.02 Amendment With Consent	Clarified parenthetical to <i>Vaughn Russell Candy Co. and Toymax Inc. v. Cookies In Bloom, Inc.</i> , 47 USPQ2d 1635 (TTAB 1998) in Note 1 to indicate that proposed amendment not approved when other parties' consent was not obtained.
514.03 Amendment Without Consent	Added <i>Drive Trademark Holdings LLC v. Inofin</i> , 83 USPQ2d 1433, 1435 (TTAB 2007) to Note 1, and <i>Drive Trademark Holdings LLC v. Inofin</i> , 83 USPQ2d 1433, 1435-46 (TTAB 2007) to Note 2.
	Deleted Louise E. Rooney, <i>TIPS FROM THE TTAB: Rule 2.133 Today</i> , 81 Trademark Rep. 408 (1991) from Notes 2, 3, 4, and 7. Deleted old footnote 266, citing to "Louise E. Rooney, <i>TIPS FROM THE TTAB: Rule 2.133 Today</i> , supra."
	Added <i>Enbridge Inc. v. Excelerate Energy Ltd. Partnership</i> , 92 USPQ2d 1537, 1539 n.3 (TTAB 2009) to Note 3.
	Deleted "See also Exam Guide No. 2-03, Guide to Implementation of Madrid Protocol in the United States, (part IV.N.) (October 28, 2003)" from Note 6 and added "See also TMEP § 1904.06" to Note 6.
	Added <i>Jansen Enterprises Inc. v. Rind</i> , 85 USPQ2d 1104, 1106 n.3 (TTAB 2007) to Note 8 and corrected grammatical expression "is an insufficient pleading" to "constitute an insufficient pleading" in Note 8.
514.03 Amendment Without	Deleted Louise E. Rooney, <i>TIPS FROM THE</i>

Consent	<i>TTAB: Rule 2.133 Today</i> , 81 Trademark Rep. 408 (1991); and Janet E. Rice, <i>TIPS FROM THE TTAB: Newest TTAB Rule Changes; More Tips on Concurrent Use Proceedings</i> , 76 Trademark Rep. 252 (1986) from Note 10.
514.04 Amendment to Allege Use; Statement of Use	No changes.
515 Motion to Remand Application to Examining Attorney	In the third paragraph, changed “may, in addition to determining the pleaded matters, include a recommendation that in the event applicant ultimately prevails in the inter partes proceeding, the examining attorney reexamine” to “will, in addition to determining the pleaded matters, include a recommendation that in the event applicant ultimately prevails in the inter partes proceeding, the examining attorney shall reexamine...”
516 Motion to Divide Application or Registration	Changed fourth paragraph to reflect electronic environment; added statement in fifth paragraph regarding rarity of denials of requests to divide; added new Note 4, citing <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1436 n.10 (TTAB 2007).
517 Motion to Strike Brief on Motion	Deleted reference to papers filed in violation of the rules as being returned to filing party in first paragraph; added statement about parties’ options for filing evidentiary objections and added statement to inform reader that Board will not strike an entire brief based on evidentiary objections.
	In third paragraph, added statements to inform reader that decision whether to grant a motion as conceded is within Board’s discretion, that surreply briefs will be given no consideration, and that parties should not file motions to strike surreply or later-filed briefs. Also, added information for practitioner regarding Board’s authority to sua sponte strike or give no consideration to overly long briefs.
	Added new Note 2, citing <i>Corporacion Habanos S.A. v. Guantanamera Cigars</i> , 86 USPQ2d 1473, 1474 (TTAB 2008).
	Added new Note 3, citing 37 CFR § 2.127(a).
518 Motion for Reconsideration of Decision	Changed references “administrative trademark judge” to “judge” and “Interlocutory attorney” to

on Motion	“attorney”; added new Note 7, citing <i>See Vignette Corp. v. Marino</i> , 77 USPQ2d 1408, 1411 (TTAB 2005).
519 Motion for Leave to Serve Additional Interrogatories	Added statement to inform practitioners that motion for leave to serve additional interrogatories is disfavored.
	Deleted Helen R. Wendel, <i>TIPS FROM THE UNITED STATES PATENT AND TRADEMARK OFFICE TTAB: The Burden Shifts: Revised Discovery Practice Under Trademark Rule 2.120(d)(1)</i> , 82 Trademark Rep. 89 (1992) from Note 1.
520 Motion to Take Foreign Deposition Orally	Added statements regarding the procedures through which parties may invoke the Hague Convention to obtain evidence in another country; added new Note 3 regarding procedure set forth in Hague Convention, citing <i>Hewlett-Packard Co. v. Healthcare Personnel, Inc.</i> , 21 USPQ2d 1552 (TTAB 1991); and added <i>Jain v. Ramparts Inc.</i> , 49 USPQ2d 1429, 1431 (TTAB 1998) to Note 6.
	Added the following: “which is to be in compliance with local laws” to the end of the sentence comprising paragraph four in the text.
521 Motion to Quash Notice of Deposition	Added ground for quashing testimonial deposition based on insufficient pretrial disclosure, and added new Note 9 in support, citing by comparison <i>Jules Jurgenson/Rhapsody Inc. v. Baumberger</i> , 91 USPQ2d 1443 (TTAB 2009).
	In fourth paragraph, added practice tip for practitioners to file motion to quash rather than motion to strike where insufficient pretrial disclosures are involved; added language about Board’s discretion to conduct telephone conferences.
	Added <i>National Football League v. DNH Management LLC</i> , 85 USPQ2d 1852, 1855 (TTAB 2008) to Note 1.
	In Note 2, changed signal introducing <i>Gold Eagle Products Co. v. National Dynamics Corp.</i> , 193 USPQ 109 (TTAB 1976) from “Compare” to “see.”
	Deleted “as a party is not required to discuss settlement” from Note 2 and changed “was baseless” to “was found baseless.”
	Added <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1653 (TTAB 2007) to Note 6.

522 Motion for Order re Manner or Place of Document Production	Added discussion regarding place of production, to inform reader that responding party's obligation is to make documents and things available for inspection but that in Board proceedings, responding party generally copies and sends documents to the requesting party. Added new Note 1 and new Note 2 in support, citing <i>No Fear Inc. v. Rule</i> , 54 USPQ2d 1551, 1555 (TTAB 2000) in each.
	Added <i>M.C.I. Foods Inc. v. Bunte</i> , 86 USPQ2d 1044, 1048 (TTAB 2008) citing <i>No Fear v. Rule</i> , 54 USPQ2d 1551 (TTAB 2000) to Note 3.
	Deleted from Note 4: Saul Lefkowitz and Janet E. Rice, Adversary Proceedings Before the Trademark Trial and Appeal Board, 75 Trademark Rep. 323, 385 (1985); and Janet E. Rice, TIPS FROM THE TTAB: Recent Changes in the TTAB Discovery Rules, 74 Trademark Rep. 449, 451 (1984).
523 Motion to Compel Disclosure or Discovery (new title)	Amended 37 CFR § 2.120(e) to reflect 2007 changes.
	In the first paragraph, added information about availability of motions to compel or supplement disclosures and attendance at a discovery conference.
	Deleted second paragraph in its entirety, which read as follows: "Alternatively, if a witness objects to, and refuses to answer (or answer adequately), a question propounded during a discovery deposition, the propounding party may obtain an immediate ruling on the propriety of the objection by applying, under 35 U.S.C. § 24, to the Federal district court in the jurisdiction where the deposition is being taken, for an order compelling answer." Also deleted old footnote 311, citing to TBMP §§ 404.09 and 411.03 in support.
	Added new second paragraph to the text, explaining procedures for objecting to questions propounded during discovery deposition and procedures where witness refuses to answer questions propounded during deposition taken under subpoena.
	Added new third paragraph to text to inform reader that failure to propound initial disclosures

	will bar party from serving traditional forms of discovery or from filing a motion to compel.
	Amended paragraph four to indicate that proceedings will be suspended upon the filing of a motion to compel disclosures, and that when the motion is filed after the close of discovery but prior to the opening of the first testimony period, the time for making pretrial disclosures will be reset.
	Amended paragraph five to add references to timing of motion to compel initial disclosures or expert testimony disclosure under 37 CFR § 2.120(e)(1).
	Deleted notice that opening of the first testimony period is increased from thirty days to sixty days, and substituted statement that the period is sixty days.
	Added statement to end of paragraph five to inform reader that motion to compel discovery is untimely if filed after the first testimony period commences, even if subsequently reset.
	Added <i>Johnson and Johnson and Roc International S.A.R.L. v. Obschestvo s Oranitchennoy; Otvetstvenn Ostiu "Wds,"</i> 95 USPQ2d 1567 (TTAB 2010) to Note 1.
	Added new Note 2, citing <i>Promgirl Inc. v. JPC Co.</i> , 94 USPQ2d 1759 (TTAB 2009). Also noted that motion to compel party to participate in discovery conference is not prerequisite to motion for sanctions.
	Added new Note 3, citing <i>Influence Inc. v. Zuker</i> , 88 USPQ2d 1859, 1860 n.3 (TTAB 2008).
	Added new Note 4, citing 37 CFR § 2.120(e); and <i>Neville Chemical Co. v. Lubrizol Corp.</i> , 183 USPQ 184, 189 (TTAB 1974).
	Added new Note 5, citing 37 CFR § 2.120(a)(3); <i>Dating DNA LLC v. Imagini Holdings Ltd.</i> , 94 USPQ2d 1889 (TTAB 2010); <i>Amazon Technologies v. Jeffrey S. Wax</i> , 93 USPQ2d 1702 (TTAB 2009); and <i>MySpace, Inc. v. Donnell Mitchell</i> , 91 USPQ2d 1060, 1060 (TTAB 2009).
	Added <i>HighBeam Marketing LLC v. Highbeam Research LLC</i> , 85 USPQ2d 1902, 1907 (TTAB 2008) to Note 6.
	Added <i>H.D. Lee Co. v. Maidenform Inc.</i> , 87 USPQ2d 1715, 1719 n.10 (TTAB 2008) to Note

	7.
	Added new Note 8, citing, in comparison. <i>La Maur, Inc. v. Bagwells Enterprises, Inc.</i> , 193 USPQ 234 (Comm'r 1976).
523.02 Special Requirements for Motion	Amended quoted portion of 37 CFR § 2.120(e) to reflect 2007 changes.
	In second paragraph, added reference to “disclosures or discovery” to inform reader that motion to compel both must be supported by written statement.
	In the third paragraph, indicated that ESTTA was the preferable method for notifying the Board of resolution of any issues pertaining to the motion to compel.
	Added a reference to TBMP § 526 to fourth paragraph.
	Added <i>Amazon Technologies, Inc. v. Jeffrey S. Wax</i> , 93 USPQ2d 1702, 1705 (TTAB 2009); and <i>Pioneer Kabushiki Kaisha v. Hitachi</i> , 74 USPQ2d 1672, 1679 n.1 (TTAB 2005) to Note 2.
	Deleted: “ <i>See also Ford Motor Co. v. Shelby International, Inc.</i> , 193 USPQ 236 (TTAB 1976); <i>Daimler-Benz Aktiengesellschaft v. Hibner Products Mfg., Inc.</i> , 189 USPQ 479 (TTAB 1976); <i>Varian Associates v. Fairfield Nobel Corp.</i> , 188 USPQ 581 (TTAB 1975); <i>J.B. Williams Co. v. Pepsodent G.m.b.H.</i> , 188 USPQ 581 (TTAB 1975); <i>Penthouse International Ltd. v. Dyn Electronics, Inc.</i> , 184 USPQ 117 (TTAB 1974); and <i>Angelica Corp. v. Collins & Aikman Corp.</i> , 183 USPQ 378 (TTAB 1974)” from Note 2.
	Clarified parenthetical to <i>Medtronic, Inc. v. Pacesetter Systems, Inc.</i> , 222 USPQ 80, 83 (TTAB 1984) in Note 2 by changing “it was clear from the nature ...” to “the nature ... clearly demonstrated.”
523.03 Time for Filing Motion	Amended 37 CFR § 2.120(e) to reflect 2007 changes.
	Added discussion of timing for motion to compel disclosures and added new Note 1 in support of rule that motion to compel disclosures must be filed prior to close of discovery period, citing 37 CFR § 2.120(e). Also added explanation of timing regarding “as last reset” with respect to the opening of plaintiff’s testimony period acting as

	deadline for filing motion to compel, and added new Note 5 in support, citing, by comparison, <i>La Maur, Inc. v. Bagwells Enterprises, Inc.</i> , 193 USPQ 234 (Comm'r 1976).
	Added <i>H.D. Lee Co. v. Maidenform, Inc.</i> , 87 USPQ2d 1715, 1719 n.10 (TTAB 2008) to Note 2.
	Added new Note 3, citing 37 CFR § 2.120(e).
	Added <i>MySpace, Inc. v. Donnell Mitchell</i> , 91 USPQ2d 1060, 1061 n.2 (TTAB 2009) to Note 4.
523.04 Failure to File Motion to Compel	Replaced the word “test” with the word “challenge” in the text.
	Added <i>H.D. Lee Co. v. Maidenform Inc.</i> , 87 USPQ2d 1715, 1719 (TTAB 2008) to Note 1.
	Clarified parenthetical to <i>Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL</i> , 59 USPQ2d 1383 (TTAB 2001) in Note 1.
	Deleted the following from Note 1: “In addition, <i>see Volkswagenwerk Aktiengesellschaft v. Clement Wheel Co.</i> , 204 USPQ 76 (TTAB 1979); <i>Procter & Gamble Co. v. Keystone Automotive Warehouse, Inc.</i> , 191 USPQ 468 (TTAB 1976); and <i>Comserv Corp. v. Comserv</i> , 179 USPQ 124 (TTAB 1973).”
524 Motion to Test Sufficiency of Response to Requests for Admission (new title)	Section Heading only.
524.01 In General	Edited Fed. R. Civ. P. 36(a) to reflect amendments, inserting Fed. R. Civ. P. 36(a)(3) and 36(a)(6) in place of “old” 36(a); amended 37 CFR § 2.120(h) to reflect rule changes.
	Added new paragraph regarding improper responses and deemed admissions, and added new Notes 3 and 4 in support, citing, by comparison, comments to Fed. R. Civ. P. 36(a)(4 – 6) in new Note 3, and citing Fed. R. Civ. P. 36(a)(3) in new Note 4.
524.02 Special Requirements for Motion	Deleted the signal “see” from Notes 1, 2, and 3 before the reference to 37 CFR § 2.120(h). Also added <i>Amazon Technologies v. Wax</i> , 93 USPQ2d 1702 (TTAB 2009) (TTAB 2009) to Note 2.
	In the third paragraph, added instruction that moving party should immediately inform Board,

	through ESTTA, if any issues raised in the motion to test are resolved before adjudication of the motion.
524.03 Time for Filing Motion	Amended quoted portion of 37 CFR § 2.120(h)(2).
	Added further explanation of rule that motion to test may not be filed once plaintiff's trial period opens, even if reset to reopen at later date.
	Added new Note 1, citing 37 CFR § 2.120(h)(1).
524.04 Failure to File Motion	Deleted from Note 1: " <i>See Watercare Corp. v. Midwesco-Enterprise, Inc.</i> , 171 USPQ 696 (TTAB 1971).
	Deleted from Note 1: " <i>Cf. also</i> TBMP § 527.04 (regarding effect of failure to timely respond to requests for admission)."
	Added to Note 1: 37 CFR § 2.120(h)(1).
525 Motion to Withdraw or Amend Admission	Added Fed. R. Civ. P. 6(b)(2); edited Fed. R. Civ. P. 36(b) to reflect amendments.
	Amended first paragraph to inform reader that if party fails to respond to requests for admissions, serving party need not file a motion to deem matter admitted.
	Added new second paragraph, explaining the two avenues for relief from having matter deemed admitted for failure to respond to a requests for admissions. Added new Note 3 in support, citing <i>Giersch v. Scripps</i> , 85 USPQ2d 1306, 1307 (TTAB 2007).
	Added <i>Giersch v. Scripps Networks, Inc.</i> , 85 USPQ2d 1306, 1308-09 (TTAB 2007) to Note 4.
	Amended parentheticals to <i>Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc.</i> , 14 USPQ2d 2064, 2065 (TTAB 1990) and <i>Johnston Pump/General Valve Inc. v. Chromalloy American Corp.</i> , 13 USPQ2d 1719, 1721 (TTAB 1989) in Note 5.
526 Motion for a Protective Order	Amended quoted portion of 37 CFR § 2.120(f); added discussion about Board's standard protective order.
	At the end of the third paragraph, added reference, by comparison, to TBMP § 523.02.
	Amended the fourth paragraph to indicate that motion for protective order that discovery not be had is appropriate when party has not provided its initial disclosures.
	Deleted sixth paragraph in its entirety, which read

	as follows: “When the Board grants a request for a protective order with respect to confidential or trade secret information, it may direct either the disclosing party, or the parties together, to prepare an order with terms that are mutually agreeable to them. Other alternatives involve accepting a protective agreement proffered by a party or ordering parties to adhere to Board’s standard agreement. Parties are encouraged, however, to stipulate to a protective agreement governing the handling of confidential or trade secret information rather than filing a motion for a protective order.”
526 Motion for a Protective Order	Deleted “old” footnote 336, which read as follows: “ <i>See, for example, Johnston Pump/General Valve Inc. v. Chromalloy American Corp., supra; and Neville Chemical Co. v. Lubrizol Corp., supra.</i> ”
	Added a new paragraph of text to inform the reader about imposition of Board’s standard protective order in all proceedings, and alternatives available to parties; added new Note 5 in support, citing 37 CFR § 2.116(g) and added new Note 6 in support, citing <i>Bausch & Lomb v. Karl Storz GmbH</i> , 87 USPQ2d 1526, 1532 (TTAB 2008). <i>See also Red Wing Co. v. Smucker Co.</i> , 59 USPQ2d 1861, 1862 (TTAB 2001).
	Added <i>Pioneer Kabushiki Kaisha v. Hitachi High Technologies America, Inc.</i> , 74 USPQ2d 1672 (TTAB 2004) to Note 3 and deleted “ <i>See also TBMP § 412 (Protective Orders)</i> ” from Note 3.
	Deleted <i>Neville Chemical Co. v. Lubrizol Corp.</i> , 184 USPQ 689 (TTAB 1975); and Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 387-388 (1985) from Note 4.
527 Motion for Sanctions	Section Heading only.
527.01 Motion for Discovery Sanctions	Section Heading only.
527.01(a) For Failure to Comply With Board Discovery Order	Amended reference to 37 CFR 2.120(g) to reflect recent rule changes.
	Added new second paragraph to inform reader that sanctions may be appropriate for a party’s refusal to participate in a discovery conference

	and that motion to compel participation in discovery conference is not prerequisite to sanctions, but that good faith efforts must be shown.
	Amended fourth paragraph to advise reader that there is no good faith effort requirement for motion for discovery sanctions, but that sanctions for failure to serve initial disclosures not available until party is in noncompliance with a motion to compel that has been granted.
	Deleted the “see” signal before reference to 37 CFR § 2.120(g)(1) in Note 1; changed signal from “see” to “cf.” before reference to <i>Ingalls Shipbuilding, Inc. v. United States</i> , 857 F.2d 1448 (Fed. Cir. 1988) in Note 1; and added <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541, 1543 (TTAB 2008); and <i>Nobelle.com LLC v. Qwest Communications Int’l Inc.</i> , 66 USPQ2d 1300, 1303 (TTAB 2003) to Note 1.
	Deleted the “see” signal before reference to 37 CFR § 2.120(g)(1) in Note 2.
	Added new Note 3, citing, by comparison, <i>Promgirl, Inc. v. JPC Co., Ltd.</i> , 94 USPQ2d 1759 (TTAB 2009).
	Added new Note 4, citing 37 CFR § 2.120(g)(1); <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541, 1543 (TTAB 2008); and <i>HighBeam Marketing LLC v. HighBeam Research LLC</i> , 85 USPQ2d 1902, 1904 (TTAB 2008).
	Added new Note 5, citing, as by example, <i>Promgirl, Inc. v. JPC Co., Ltd.</i> , 94 USPQ2d 1759 (TTAB 2009); and <i>Guthy-Renker Corp. v. Boyd</i> , 88 USPQ2d 1701, 1704 (TTAB 2008).
	Amended Note 6 to add <i>M.C.I. Foods Inc. v. Bunte</i> , 86 USPQ2d 1044, 1048 (TTAB 2008); and <i>HighBeam Marketing LLC v. HighBeam Research LLC</i> , 85 USPQ2d 1902, 1905 (TTAB 2008); also amended Note 6 to add <i>Nobelle.com LLC v. Qwest Communications Int’l Inc.</i> , 66 USPQ2d 1300, 1303 (TTAB 2003). Deleted “ <i>Ingalls Shipbuilding, Inc. v. United States, supra</i> ” from Note 6.
	Added new Note 10, citing <i>HighBeam Marketing LLC v. HighBeam Research LLC</i> , 85 USPQ2d

	1902 (TTAB 2008).
	Added new Note 11, citing <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541, 1543 (TTAB 2008).
	Added new Note 12, citing <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541, 1543 (TTAB 2008).
527.01(b) If Party Says it will not Respond to Discovery Request or Make Required Disclosures (new title)	Amended reference to 37 CFR § 2.120(g)(2) to reflect recent rule changes.
	Amended first paragraph to add information regarding motions for sanctions for failure to provided initial disclosures or expert disclosures.
	Amended first paragraph to inform parties when to file motion for sanctions under 37 CFR § 2.120(g)(2) and when to file under 37 CFR § 2.120(g)(1)
	Added new Note 1, citing <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens, LLC</i> , 88 USPQ2d 1541, 1542-43 (TTAB 2008).
527.01(c) Untimely Response to Discovery Requests	In Note 3, changed the parenthetical to <i>No Fear Inc. v. Rule</i> , 54 USPQ2d 1551, 1554 (TTAB 2000) from “(party will generally not be found to have waived the right to make these objections)” to “(party will generally not be found to have waived the right to make objections on the basis of privilege, confidentiality, or attorney work product).”
527.01(d) In the Case of Requests for Admission	Amended second paragraph to instruct practitioners against filing a motion to deem requests admitted when no responses to requests for admission have been served.
527.01(e) Estoppel Sanction	Amended to caution reader that unless refusal is “unequivocal,” estoppel sanction may not apply.
	Added new Note 1, citing <i>Panda Travel, Inc. v. Resort Option Enterprises, Inc.</i> , 94 USPQ2d 1789 (TTAB 2009).
	Deleted from Note 2: “Additional cases: <i>Sunkist Growers, Inc. v. Benjamin Ansehl Co.</i> , 229 USPQ 147 (TTAB 1985); <i>Era Corp. v. Electronic Realty Associates, Inc.</i> , 211 USPQ 734 (TTAB 1981); <i>Visual Information Institute, Inc. v. Vicon Industries Inc.</i> , 209 USPQ 179 (TTAB 1980); <i>Shoe Factory Supplies Co. v. Thermal</i>

	<p><i>Engineering Co.</i>, 207 USPQ 517 (TTAB 1980); <i>Refreshment Machinery Inc. v. Reed Industries, Inc.</i>, 196 USPQ 840 (TTAB 1977); <i>Autac Inc. v. Walco Systems, Inc.</i>, 195 USPQ 11 (TTAB 1977); and <i>Georgia-Pacific Corp. v. Great Plains Bag Co.</i>, 190 USPQ 193 (TTAB 1976). Cf. <i>Nestle Foods Corp. v. Kellogg Co.</i>, 6 USPQ2d 1145 (TTAB 1988); <i>Bigfoot 4x4 Inc. v. Bear Foot Inc.</i>, 5 USPQ2d 1444 (TTAB 1987); <i>Volkswagenwerk Aktiengesellschaft v. Clement Wheel Co.</i>, 204 USPQ 76 (TTAB 1979); and <i>Procter & Gamble Co. v. Keystone Automotive Warehouse, Inc.</i>, 191 USPQ 468 (TTAB 1976).”</p>
	<p>Added new Note 3, citing <i>Vignette Corp. v. Marino</i>, 77 USPQ2d 1408, 1411 (TTAB 2005)</p>
527.01(f) Motions in Limine (New)	<p>Added new section discussing Board’s practice regarding prospective rulings on evidence. Includes addition of new Note 1, citing <i>Greenhouse Systems Inc. v. Carson</i>, 37 USPQ2d 1748, 1750 (TTAB 1995); and new Note 2, citing <i>Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.</i>, 77 USPQ2d 1492 (TTAB 2005); and <i>JSB Int’l Inc. v. Auto Sound North Inc.</i>, 215 USPQ 60 (TTAB 1982).</p>
527.02 Motion for Fed. R. Civ. P. 11 Sanctions	<p>Amended references to Fed. R. Civ. P. 11(b), (c) and (d) and 37 CFR § 11.18 (formerly 10.18) to reflect rules changes.</p>
527.02 Motion for Fed. R. Civ. P. 11 Sanctions	<p>Added new fourth paragraph on “safe harbor” provisions under Fed. R. Civ. P. 11(c)(2) and informs reader that Board will not grant Rule 11 motions which fail to comply with this requirement.</p>
	<p>Amended sixth paragraph by amending former 37 CFR § 10.18 to § 11.18, and added, to the end of the last sentence in this paragraph, the following: “and any appropriate complaint should be brought to the attention of the Office of Enrollment and Discipline.”</p>
	<p>Added new Note 6, citing <i>Carrini Inc. v. Carla Carini, Srl</i>, 57 USPQ2d 1067, 1071 (TTAB 2000).</p>
	<p>Changed reference from “37 CFR § 10.18” to “37 CFR § 11.18” in Note 7; added reference to 37 CFR part 11 in Note 7; and changed “See 37 CFR §§ 10.18(d) and 10.20, et.seq.” to “See 37 CFR §§ 11.18(d) and 11.20, et.seq.” in Note 7.</p>

527.03 Inherent Authority to Sanction	Deleted parallel references from <i>Chambers v. NASCO, Inc.</i> , 501 U.S. 32 (1991) in Note 1, which read: “111 S.Ct. 2123, 115 L.Ed.2d 27, rehearing denied, 501 U.S. 1269, 112 S.Ct. 12, 115 L.Ed.2d 1097.”
	Added <i>HighBeam Marketing LLC v. HighBeam Research LLC</i> , 85 USPQ2d 1902, 1906-07 (TTAB 2008) in Note 2 and changed “insured” to “ensured.”
528 Motion for Summary Judgment and Accelerated Case Resolution (ACR)	Deleted old Fed. R. Civ. P. 56 and inserted new Rule 56, but prior to December 1, 2010 amendment.
528.01 General Nature of Motion	Amended first paragraph to replace “depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any” with “discovery and disclosure materials on file, and any affidavits.” Added language in eleventh paragraph to clarify length of briefs. Added new paragraph twelve clarifying time for appeal of summary judgment determination. Added new paragraph thirteen to indicate that partial summary judgment may be appropriate. Updated footnotes with new cites and deleted outdated TIPS articles from footnotes 3 and 14.
	Added new parenthetical to <i>University Book Store v. University of Wisconsin Board of Regents</i> , 33 USPQ2d 1385, 1390-91 (TTAB 1994) in Note 2.
	Deleted from Note 3: “See also T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: Discovery Safeguards in Motions for Summary Judgment: No Fishing Allowed</i> , 80 Trademark Rep. 413, 413-414 (1990); and T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: Inter Partes Summary Judgment Revisited</i> , 76 Trademark Rep. 73, 77-78 (1986).”
	Added reference to <i>In re Bose Corp.</i> , 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009), (reversing <i>Bose Corp. v. Hexawave, Inc.</i> , 88 USPQ2d 1332 (TTAB 2007) in Note 3.
	Added pin cite and parenthetical to <i>Corporate Document Services Inc. v. I.C.E.D. Management Inc.</i> , 48 USPQ2d 1477, 1479 (TTAB 1998) in Note 4.
	Added parenthetical to <i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986) in Note 6.
	Added <i>Enbridge, Inc. v. Excelerate Energy Limited Partnership</i> , 92 USPQ2d 1537, 1540

	(TTAB 2009); and <i>Paris Glove of Canada Ltd. v. SBC/Sporto Corp.</i> , 84 USPQ2d 1856, 1860 (TTAB 2007) to Note 6.
	Added <i>Venture Out Properties LLC v. Wynn Resort Holdings LLC</i> , 81 USPQ2d 1887, 1890 (TTAB 2007) to Note 7.
	Added “nonmovant” in parenthetical to <i>Opryland USA Inc. v. The Great American Music Show Inc.</i> , 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992) in Note 8; added parenthetical to <i>Hornblower & Weeks Inc. v. Hornblower & Weeks Inc.</i> , 60 USPQ2d 1733, 1735 (TTAB 2001) in Note 8.
	Added parenthetical to <i>Opryland USA Inc. v. The Great American Music Show Inc.</i> , 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992) in Note 10.
	Added, by comparison, <i>Honda Motor Co., Ltd. v. Friedrich Winkelmann</i> , 90 USPQ2d 1660, 1662 (TTAB 2009) to Note 10.
	Added parenthetical to <i>Opryland USA Inc. v. The Great American Music Show Inc.</i> , 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992) in Note 11.
	Reversed order of citation of <i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 248 (1986); and <i>Institut National Des Appellations d'Origine v. Brown-Forman Corp.</i> , 47 USPQ2d 1875, 1879 (TTAB 1998) in Note 12.
	Added references to <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433 (TTAB 2007); and <i>Fishing Processors Inc. v. Fisher King Seafoods Ltd.</i> , 83 USPQ2d 1762, 1764 (TTAB 2007) in Note 14.
	Deleted “old” footnote 377, citing “See T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: Discovery Safeguards in Motions for Summary Judgment: No Fishing Allowed</i> , 80 Trademark Rep. 413 (1990).”
	Added <i>Cooper Technologies Co. v. Denier Electric Co.</i> , 89 USPQ2d 1478, 1479 (TTAB 2008) to Note 16.
	Added new Note 17, citing <i>Copelands' Enterprises, Inc. v. CNV, Inc.</i> , 887 F.2d 1065, 12 USPQ2d 1563 (Fed. Cir. 1989); <i>Hewlett-Packard Development Co., L.P. v. Vudu, Inc.</i> 92 USPQ2d

	1630, 1632 n.5 (TTAB 2009); and <i>Herbaceuticals, Inc. v. Xel Herbaceuticals, Inc.</i> , 86 USPQ2d 1572, 1579, n.6 (TTAB 2008).
	Added new Note 18, citing <i>Hewlett-Packard Development Co. v. Vudu, Inc.</i> , 92 USPQ2d 1630, 1634 (TTAB 2009).
528.02 Time For Filing Motions	Replaced old 37 CFR § 2.127(e)(1) with amended rule; amended language in body of section to conform to amended rule and current practice and to provide for submission of motions under provision of Accelerated Case Resolution (ACR). Also added text to inform reader that untimely motions may be decided before responsive brief filed and that time for filing reply briefs will not be extended.
	Added new Note 1, citing 37 CFR § 2.127(e)(1); and <i>Qualcomm, Inc. v. FLO Corp.</i> , 93 USPQ2d 1768, 1769-70 (TTAB 2010).
	Added new Note 2, citing 37 CFR § 2.127(e)(1); <i>Compagnie Gervais Danone v. Precision Formulations LLC</i> , 89 USPQ2d 1251, 1255 n1. (TTAB 2009); 37 CFR § 2.120(a); <i>Nasalok Coating Corp. v. Nylok Corp.</i> , 86 USPQ2d 1369, 1375-77 (Fed. Cir. 2008); and <i>Mayer/Berkshire Corp. v. Berkshire Fashions</i> , 76 USPQ2d 1310, 1312 (Fed. Cir. 2005).
	Deleted reference to TBMP § 528.01 from Note 3; added <i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 327 (1986); and <i>Hewlett-Packard Development Co. v. Vudu Inc.</i> , 92 USPQ2d 1630, 1631 (TTAB 2009) to Note 3.
	Deleted “David J. Kera, <i>TIPS FROM THE TTAB: Summary Judgment</i> , 71 Trademark Rep. 59, 62 (1981); and T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: Inter Partes Summary Judgment Revisited</i> , 76 Trademark Rep. 73, at 73-74 (1986)” from Note 5.
	Added 37 CFR § 2.127(e)(1) to Note 6 and deleted “ <i>Bausch & Lomb Inc. v. Leupold & Stevens Inc.</i> , 1 USPQ2d 1497, 1498 n.2 (TTAB 1986) (untimely cross-motions decided where parties acknowledged that both were untimely but wanted a ruling thereon); <i>Lukens Inc. v. Vesper Corp.</i> , 1 USPQ2d 1299, 1300 n.2 (TTAB 1986), aff’d, 831 F.2d 306 (Fed. Cir. 1987) (untimely motion decided where non-moving party did not

	object to timeliness and responded on merits and, moreover, motion was based on collateral estoppel); and <i>Buffett v. Chi Chi's, Inc.</i> , 226 USPQ 428 (TTAB 1985) (untimely motion decided where no objection to timeliness was raised and delay was relatively insignificant)” from Note 6.
	Added new Note 9, citing 37 CFR § 2.127(e)(1).
528.03 Suspension Pending Determination of Motion	In first paragraph, added text to inform reader that filing of untimely motion for summary judgment will generally not be grounds for suspension.
	Added new third paragraph to indicate that disclosures are tolled due to suspension.
	Deleted <i>Giant Food, Inc. v. Standard Terry Mills, Inc.</i> , 229 USPQ 955, 965-66 (TTAB 1986) (pendency of applicant's summary judgment motion did not under the circumstances constitute good cause for not responding to outstanding discovery requests) in Note 3.
	Deleted <i>Pegasus Petroleum Corp. v. Mobil Oil Corp.</i> , 227 USPQ 1040 (TTAB 1985) (motion to suspend for civil action not considered) in Note 4.
	Removed “see” signal from reference to 37 CFR § 2.127(d) in Note 7.
	Added citation to <i>Super Bakery Inc. v. Benedict</i> , 96 USPQ2d 1134, 1135 (TTAB 2010) in Notes 2 and 4.
528.04 Miscalcaptioned Motion	Redrafted first paragraph with new body text and new footnotes to reflect change in practice resulting from changes in Trademark Rules regarding motions to dismiss or for judgment on the pleadings filed prior to service of initial disclosures.
	Added new Note 1, citing 37 CFR § 2.127(e)(1); and <i>Compagnie Gervais Danone v. Precision Formulations, LLC</i> , 89 USPQ2d 1251, 1255-56 (TTAB 2009).
	Deleted “old” footnote 395, which read: “See, for example, <i>Wellcome Foundation Ltd. v. Merck & Co.</i> , 46 USPQ2d 1478, 1479 n.2 (TTAB 1998) (third-party registrations submitted, but excluded). See also TBMP § 503.04 (regarding motions to dismiss for failure to state a claim) and TBMP § 504.03 (regarding motions for judgment on the pleadings).”

	Deleted “old” footnote 396, which read: “ <i>See, for example, Capital Speakers Inc. v. Capital Speakers Club of Washington D.C. Inc.</i> , 41 USPQ 1030, 1031 (TTAB 1996) (12(b)(6) motion treated in its entirety as one for summary judgment). See also TBMP § 503.04 (Matters Outside the Pleading for Motion to Dismiss) and TBMP § 504.03 (Matters Outside the Pleadings for Judgment on Pleadings) and authorities cited therein.”
	Deleted “old” footnote 397, which read: “See TBMP § 503.04 and TBMP § 504.03; <i>Institut National des Appellations d’Origine v. Brown-Forman Corp.</i> , 47 USPQ2d 1875, 1876 n.1 (TTAB 1998) (motion under 12(b)(6) and/or for summary judgment treated as a motion for summary judgment where both parties submitted evidentiary materials outside pleadings); and <i>Parker Brothers v. Tuxedo Monopoly, Inc.</i> , 225 USPQ 1222 (TTAB 1984) (motion to dismiss treated as one for summary judgment where matters outside the pleadings submitted and cross-motion for summary judgment filed in response). <i>Cf. Selva & Sons, Inc. v. Nina Footwear, Inc.</i> , 705 F.2d 1316, 217 USPQ 641 (Fed. Cir. 1983) (Board improperly treated motion to dismiss as a motion for summary judgment by rendering a decision on the merits without giving plaintiff notice it would treat the motion as such).”
528.04 Miscalcaptioned Motion	Updated citation to Wright, Miller and Kane, <i>Federal Practice and Procedure: Civil 3d</i> § 2722 (2009) in Note 2.
528.05 Summary Judgment Evidence	Section Heading only
528.05(a) In General	Split (old) Section 528.05(a) into Section 528.05(a)(1) In General and Section 528.05(a)(2) Accelerated Case Resolution (ACR).
	Added new third paragraph explaining circumstances when judicial notice may be taken or supplemental legal authority submitted.
	Added new fifth paragraph noting that the Board does not entertain motions in limine.
	Added new Note 2, citing <i>The Cold War Museum, Inc. v. Cold War Air Museum, Inc.</i> , 586 F.3d 1352, 92 USPQ2d 1626, 1628 (Fed. Cir. 2009).
	Added new Note 4, citing <i>University of Notre</i>

	<i>Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.</i> , 213 USPQ 594 (TTAB 1982), <i>aff'd</i> , 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); <i>Enbridge Inc. v. Excelerate Energy LP</i> , 92 USPQ2d 1537, 1542 (TTAB 2009); and <i>Eveready Battery Co. v. Green Planet Inc.</i> , 91 USPQ2d 1511, 1515 (TTAB 2009).
	Added new Note 5, citing <i>The Cold War Museum, Inc. v. Cold War Air Museum, Inc.</i> , 586 F.3d 1352, 92 USPQ2d 1626, 1628 (Fed. Cir. 2009).
	Added new Note 7, citing <i>Greenhouse Systems Inc. v. Carson</i> , 37 USPQ2d 1748 (TTAB 1995).
	Added <i>Land O' Lakes Inc. v. Hugunin</i> , 88 USPQ2d 1957, 1960 n.7 (TTAB 2008); and <i>University Games Corp. v. 20Q.net Inc.</i> , 87 USPQ2d 1465, 1468 n.4 (TTAB 2008) to Note 8 and deleted "See also <i>Oxy Metal Industries Corp. v. Technic, Inc.</i> , 189 USPQ 57 (TTAB 1975), summ. judgment granted, 191 USPQ 50 (TTAB 1976); and <i>Clairol Inc. v. Holland Hall Products, Inc.</i> , 165 USPQ 214 (TTAB 1970)" from Note 8.
	Added <i>Eveready Battery Co., Inc. v. Green Planet, Inc.</i> , 91 USPQ2d 1511, 1513 (TTAB 2009) to Note 9.
	Amended language in body of section to conform to amended 37 CFR § 2.127(e); added language and footnote 4 regarding evidentiary rulings; moved cite to TBMP in footnote 401 into body of section and deleted footnote; updated footnotes with new cites.
528.05(a)(2) Accelerated Case Resolution (ACR) (new section)	Added new section and corresponding Notes addressing the availability and mechanics of ACR.
528.05(b) Affidavits and Accompanying Exhibits	Updated Note 1 with cites to <i>Sweats Fashions Inc. v. Pannill Knitting Co.</i> , 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987); <i>Paris Glove of Canada Ltd. v. SBC/Sporto Corp.</i> , 84 USPQ2d 1856, 1864 n.8 (TTAB 2007); and <i>Westrex Corp. v. New Sensor Corp.</i> , 83 USPQ 1215, 1217 (TTAB 2007).
528.05(c) Discovery Responses and Disclosures (new title)	Replaced old 37 CFR § 2.127(e)(2) reference with amended rule and added reference to 37 CFR § 2.120(j)(8).
528.05(d) Registrations	Replaced old 37 CFR § 2.122(d)(1) cite with amended rule; amended language in body of section to conform to amended rule.

	Added information on making registration of record for purposes of ACR; added parenthetical to <i>Lloyd's Food Products Inc. v. Eli's Inc.</i> , 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993) in Note 3.
528.05(e) Printed Publications and Official Records	Deleted paragraph headed "Internet evidence and other materials that are not self-authenticating" and added new fourth paragraph, headed "Internet evidence," to reflect recent case law on admissibility of properly identified Internet materials. Also added new heading to sixth paragraph to identify discussion of materials that are not self-authenticating.
	Added new sixth paragraph to inform reader that printed publications are not admissible as proof of any facts asserted therein but only for what they show on their face.
	Added <i>Paris Glove of Canada Ltd. V. SBC/Sporto Corp.</i> , 84 USPQ2d 1856, 1857 (TTAB 2007) to Note 1.
	Added new Note 2, citing <i>Christopher Brooks v. Creative Arts by Calloway</i> , 93 USPQ2d 1823, 1825-6 (TTAB 2009) [appeal pending] <i>Creative Arts by Calloway, LLC v. Christopher Brooks</i> , Civ. No. 09-10488 (SDNY filed Dec. 28, 2009).
	Deleted <i>Raccioppi v. Apogee Inc.</i> , 47 USPQ2d 1368, 1370 (TTAB 1998) from Note 3; deleted <i>Raccioppi v. Apogee Inc.</i> , 47 USPQ2d 1368, 1369 (TTAB 1998) from Note 4.
	Added new Note 6, citing <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031, 1039 (TTAB 2010); and <i>Paris Glove of Canada Ltd. v. SBC/Sporto Corp.</i> , 84 USPQ2d 1856, 1857 (TTAB 2007).
	Added new Note 7, citing <i>Int'l Assn. of Fire Chiefs v. H. Marvin Ginn Corp.</i> , 225 USPQ 940, 942 n.6 (TTAB 1985), <i>rev'd on other grounds</i> , 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986); <i>In re National Data Corp.</i> , 222 USPQ 515, 517 n.3 (TTAB 1984), <i>rev'd on other grounds</i> , 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1085) and <i>In re Capital Formation Counselors, Inc.</i> , 219 USPQ 916, 918 n.3 (TTAB 1983).
	Added new Note 8, citing <i>Boyds Collection Ltd. v. Herrington & Co.</i> , 65 USPQ2d 2017, 2020 n.8 (TTAB 2008); and <i>Exxon Corp. v. Fill-R-Up</i>

	<i>Systems, Inc.</i> 182 USPQ 443, 445 (TTAB 1974).
	Deleted “old” footnote 419, which read: “See <i>Raccioppi v. Apogee Inc.</i> , <i>supra</i> at 1370. See also <i>In re Total Quality Group Inc.</i> , 51 USPQ2d 1474, 1476 (TTAB 1999).”
	Deleted “old” footnote 420, which read: <i>Weyerhaeuser v. Katz, supra</i> at 1232 (TTAB 1992) citing <i>Glamorene Products Corporation v. Earl Grissmer Company, Inc.</i> , 203 USPQ 1090, 1092 n.5 (TTAB 1979). See <i>Raccioppi v. Apogee Inc.</i> , <i>supra</i> at 1370. Cf. <i>Michael S. Sachs Inc. v. Cordon Art B.V.</i> , 56 USPQ2d 1132, 1134 (TTAB 2000) (introduction of telephone listings retrieved from Internet was improper); and <i>Plyboo America Inc. v. Smith & Fong Co.</i> , 51 USPQ2d 1633, 1634 n.3 (TTAB 1999) (printout of page of website is not proper subject matter for a notice of reliance).
	Deleted “old” footnote 421, which read: “See <i>Raccioppi v. Apogee Inc.</i> , <i>supra</i> at 1370. See also <i>In re Total Quality Group Inc.</i> , <i>supra</i> (examining attorney’s request for judicial notice of on-line dictionary definitions denied because the definitions were not available in printed format).”
	Added Fed. R. Civ. P. 56(e); Fed. R. Civ. P. 56(c); <i>Paris Glove of Canada Ltd. v. SBC/Sporto Corp.</i> , 84 USPQ2d 1856, 1864 n.8 (TTAB 2007); and <i>Westrex Corp. v. New Sensor Corp.</i> , 83 USPQ 1215, 1217 (TTAB 2007) to Note 9 and deleted “See, e.g., <i>Raccioppi v. Apogee Inc.</i> , <i>supra</i> at 1369” from Note 9.
	Added <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031 (TTAB 2010) to Note 10 and deleted <i>Raccioppi v. Apogee Inc.</i> , <i>supra</i> at 1370 from Note 10.
528.05(f) Testimony from Another Proceeding	Added text to second paragraph to indicate that testimony from another proceeding that was introduced in connection with a summary judgment motion may, upon stipulation, be used at trial.
	Added <i>Eveready Battery Co., Inc. v. Green Planet, Inc.</i> , 91 USPQ2d 1511, 1513 (TTAB 2009); and <i>Micro Motion Inc. v. Danfoss A/S</i> , 49 USPQ2d 1628, 1629 n.2 (TTAB 1998) to Note 2.
528.06 Request for Discovery to Respond to Summary Judgment	Deleted former Fed. R. Civ. P. 56(f) and inserted amended Rule 56(f) (prior to the December 1, 2010 amendment); deleted former 37 CFR

	§ 2.127(e)(1) and inserted amended rule.
	Amended second paragraph to advise practitioners that motions under Rule 56(f) generally will be denied if not supported by an affidavit; added language to sixth paragraph regarding combined responses to summary judgment motions and requests for Rule 56(f) discovery.
	Added <i>Paris Glove of Canada Ltd. V. SBC/Sporto Corp.</i> , 84 USPQ2d 1856, 1860 (TTAB 2007) to Note 1.
528.07(a) Unpleaded Issue Not Basis for Entering Summary Judgment	Added language regarding Board treatment of new allegations in amended pleading when amended answer not filed prior to consideration of summary judgment motion.
	Added <i>Asian and Western Classics B.V. v. Lynne Selkow</i> , 92 USPQ2d 1478, 1480 (TTAB 2009); <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1528 n.3 (TTAB 2008); <i>Drive Trademark Holdings LP v. Inofin</i> , 83 USPQ2d 1433, 1438 n.12 (TTAB 2007); and <i>Giersch v. Scripps Networks Inc.</i> , 85 USPQ2d 1306, 1309 n.3 (TTAB 2007) to Note 1.
	Added <i>Giersch v. Scripps Networks Inc.</i> , 85 USPQ2d 1306, 1309 n.3 (TTAB 2007); <i>Fishking Processors Inc. v. Fisher King Seafoods Ltd.</i> , 83 USPQ2d 1762, 1766 n.4 (TTAB 2007) to Note 3.
528.07(b) Not Defense Against Summary Judgment	Changed signal for <i>Blansett Pharmacal Co. v. Carmrick Laboratories Inc.</i> , 25 USPQ2d 1473, 1477 (TTAB 1992) from “cf.” to “see” in Note 1.
528.08 Entry of Summary Judgment in Favor of Nonmoving Party	No changes made.
529 Motion to Offer Discovery Deposition of Self or Nonparty	Amended title of reference to 37 CFR § 2.120(j) to conform to amended Rule
	Added new Note 2, citing <i>Galaxy Metal Gear Inc. v. Direct Access Technology, Inc.</i> , 91 USPQ2d 1859, 1862 (TTAB 2009); and <i>Hilson Research Inc. v. Society for Human Resource Management</i> , 27 USPQ2d 1423, 1426 (TTAB 1993).
	Added, by comparison, <i>Cerveceria Modelo S.A. de C.V. v. R.B. Marco & Sons, Inc.</i> , 55 USPQ2d 1298, 1302 n. 11 (TTAB 2000) to Note 3.

530 Motion to Use Testimony From Another Proceeding	Clarified language second paragraph to inform reader that motion for leave to use testimony may be filed during discovery, or thereafter but that better practice is to file the motion early in the proceeding, and that such motion will not normally result in suspension.
	Deleted <i>See Phillip Morris Inc. v. Brown & Williamson Tobacco Corp.</i> , 230 USPQ 172 (TTAB 1986 from Note 4 and added <i>Focus 21 International Inc. v. Pola Kasei Kogyo Kabushiki Kaisha</i> , 22 USPQ2d 1316 (TTAB 1992) to Note 4.
531 Motion That Deposition Upon Written Questions Be Taken Orally	Updated reference to 37 CFR § 2.23(a)(1) to include title of rule.
532 Motion to Strike Notice of Reliance	Included “written disclosures” among types of discovery that may be introduced as evidence by notice of reliance.
	Added <i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629, 1632 (TTAB 2007) to Note 1.
	Added <i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629, 1632 (TTAB 2007); <i>The Ritz Hotel Limited v. Ritz Closet Seat Corp.</i> , 17 USPQ2d 1466 (TTAB 1990); <i>Seaguard Corp. v. Seaward Int’l, Inc.</i> , 223 USPQ 58, 59 n.4 (TTAB 1984); and <i>Otis Elevator Co. v. Echlin Mfg. Co.</i> , 187 USPQ 310, 313 n.4 (TTAB 1975) to Note 3.
	Added <i>M-Tek Inc. v. CVP Systems Inc.</i> , 17 USPQ2d 1070 (TTAB 1990) to Note 5.
533 Motion to Strike Trial Testimony Deposition	Chapter Heading only.
533.01 On Ground of Untimeliness	Deleted old 37 CFR § 2.121(a)(1) and inserted updated rule.
	Added parenthetical to <i>Harjo v. Pro-Football Inc.</i> , 45 USPQ2d 1789, 1790 (TTAB 1998) in Note 2.
	Added “cf.” signal in front of citation to <i>Of Counsel Inc. v. Strictly of Counsel Chartered</i> , 21 USPQ2d 1555 (TTAB 1991) in Note 3.
533.02(a) On Ground of Improper or Inadequate Notice (new title)	Renamed as 533.02(a); deleted old 37 CFR § 2.123(e)(3) and inserted update rule.
	Added language cross-referencing motions to quash in new third paragraph, and added language advising parties on avoiding deposition scheduling disputes.
	Added <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d

	1648, 1652-3, (TTAB 2007); and <i>Gaudreau v. American Promotional Events, Inc.</i> , 82 USPQ2d 1692 (TTAB 2007) to Note 1.
	Added new Note 3, citing 37 CFR § 2.123(c); Fed. R. Civ. P. 30(b) and 31(a); and <i>Duke University v. Hagggar Clothing Co.</i> , 54 USPQ2d 1443, 1444 (TTAB 2000).
533.02(b) On Ground of Failure to Disclose Witness in Expert or Pretrial Disclosures (new section)	Added new section referencing 37 CFR §§ 2.120(a)(1), 2.121(e), and 2.123(e)(3), and corresponding footnotes addressing new ground for striking testimony depositions under amended rules and cross-referencing motions to quash.
	Added information for reader addressing new ground for striking testimony depositions under amended rules and cross-referencing motions to quash.
	Added new Note 1, citing Fed. R. Civ. P. 26(a)(1); 37 CFR § 2.116(a); <i>Byer California v. Clothing for Modern Times Ltd.</i> , 95 USPQ2d 1175 (TTAB 2010); and <i>Jules Jurgensen/Rhapsody, Inc.</i> , 91 USPQ2d 1443, n.1 (TTAB 2009).
	Added new Note 2, citing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 (August 1, 2007).
	Added new Note 3, citing 37 CFR § 2.120(a)(2).
	Added new Note 4, citing 37 CFR § 2.121(e); and <i>Jules Jurgensen/Rhapsody, Inc.</i> , 91 USPQ2d 1443, 1444 (TTAB 2009).
	Added new Note 5, citing 37 CFR § 2.123(e)(3); and <i>Jules Jurgensen/Rhapsody, Inc.</i> , 91 USPQ2d 1443 (TTAB 2009).
533.03 When Motion to Strike Should Not Be Filed	Added new Note 1, citing <i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629, 1632 (TTAB 2007); <i>Hard Rock Café International (USA) Inc. v. Elsea</i> , 56 USPQ2d 1504, 1507 n.5 (TTAB 2000); and <i>Reflange Inc. v. R-Con International</i> , 17 USPQ2d 1125, 1126 n.4 (TTAB 1990).
534 Motion For Judgment For Plaintiff's Failure to Prove Case	Section Heading only.
534.01 In General	Added reference, by comparison, to TBMP § 527.03.
534.02 Motion For Judgment Under 37 CFR § 2.132(a)	In fifth paragraph, added language regarding resetting appropriate trial dates if timely motion for judgment under 37 CFR § 2.132(a) is denied.

	In sixth paragraph, included reference to pretrial disclosure dates.
	Added parenthetical and pin cite to <i>Hewlett-Packard Co. v. Olympus Corp.</i> , 931 F.2d 1551, 18 USPQ2d 1710, 1712 (Fed. Cir. 1991) in Note 1.
	Added parenthetical to <i>PolyJohn Enterprises Corp. v. 1-800-Toilets Inc.</i> , 61 USPQ2d 1860-61 (TTAB 2002); and <i>HKG Industries Inc. v. Perma-Pipe Inc.</i> , 49 USPQ2d 1156, 1157 (TTAB 1998) in Note 4.
	Added <i>Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership</i> , 507 U.S. 380 (1993); and <i>Pumpkin Ltd. v. The Seed Corps</i> , 43 USPQ2d 1582, 1586 (TTAB 1997) to Note 5.
	Deleted two paragraphs containing cases decided prior to <i>Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership</i> , 507 U.S. 380 (1993). These paragraphs read as follows: “See also the following cases [NOTE: These cases were decided prior to <i>Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership</i> , 507 U.S. 380 (1993) which changed the excusable neglect standard. For a discussion of the effect of this change on the Board's analysis, see TBMP § 509.01(b) regarding motions to reopen.] <i>Hewlett-Packard Co. v. Olympus Corp.</i> , 931 F.2d 1551, 18 USPQ2d 1710 (Fed. Cir. 1991) (mere request from adversary for extension of time is not sufficient and plaintiff cannot rely on inaction of defendant to establish that its own neglect was excusable); <i>Grobet File Co. of America Inc. v. Associated Distributors Inc.</i> , 12 USPQ2d 1649 (TTAB 1989) (no excusable neglect where plaintiff mistakenly assumed extension of time to respond to discovery would result in extension of discovery period); and <i>Fort Howard Paper Co. v. Kimberly-Clark Corp.</i> , 216 USPQ 617 (TTAB 1982) (opposer's good faith interpretation of parties' long-standing agreement to cooperate in extending or resetting dates constituted excusable neglect). <i>Cf. Midwest Plastic Fabricators Inc. v. Underwriters Laboratories Inc.</i> ,

	<p>5 USPQ2d 1067 (TTAB 1987) (plaintiff entitled to know disposition of defendant's pending motion to amend its answer before proceeding to trial); and <i>Proctor & Gamble Co. v. Johnson & Johnson Inc.</i>, 485 F. Supp. 1185, 205 USPQ 697 (S.D.N.Y. 1979), aff'd without opinion, 636 F.2d 1203 (2d Cir. 1980). Additional cases: <i>Allegro High Fidelity, Inc. v. Zenith Radio Corp.</i>, 197 USPQ 550 (TTAB 1977) (civil action filed by plaintiff after close of its testimony period); <i>Tel-E-Gift Corp. v. Teleflora Inc.</i>, 193 USPQ 254 (TTAB 1976) (communication problem between plaintiff and its counsel); <i>Litton Business Systems, Inc. v. J. G. Furniture Co.</i>, 190 USPQ 428 (TTAB 1976), recon. denied, 190 USPQ 431 (TTAB 1976) (inadequate docket system and heavy work load of plaintiff's counsel; request filed by plaintiff, after close of its testimony period, that Board take judicial notice of certain matters); <i>Litton Business Systems, Inc. v. JG Furniture Co.</i>, 188 USPQ 509 (TTAB 1976) (answer to complaint contained certain admissions); <i>A.R.A. Manufacturing Co. v. Equipment Co.</i>, 183 USPQ 558 (TTAB 1974) (unfamiliarity with current rule governing introduction of plaintiff's registration); <i>Pierce Foods Corp. v. Mountain Mamma, Inc.</i>, 183 USPQ 380 (TTAB 1974) (applicant assertedly guilty of unclean hands); <i>Other Telephone Co. v. Connecticut National Telephone Co.</i>, 181 USPQ 125 (TTAB 1974), petition denied, 181 USPQ 779 (Comm'r 1974) (during its testimony period, plaintiff had moved to suspend pending outcome of recently filed civil action); <i>W. R. Grace & Co. v. Red Owl Stores, Inc.</i>, 181 USPQ 118 (TTAB 1973) (unfamiliarity with current rule governing introduction of plaintiff's registration); and <i>Perfect Film & Chemical Corp. v. Society Ordinastral</i>, 172 USPQ 696 (TTAB 1972) (allegations in pleading, and exhibits attached thereto, not evidence in plaintiff's behalf)."</p>
534.03 Motion For Judgment Under 37 CFR § 2.132(b)	<p>In first paragraph, added language regarding sufficiency of records submitted from USPTO database; added text to third paragraph to clarify that Board has discretion to defer consideration of motion and decide case on its merits; and added text to fourth paragraph to include</p>

	reference to pretrial disclosures.
	Added parenthetical and pin cite to <i>Pfaltzgraf v. William Davies Co.</i> , 175 USPQ 620, 621 (TTAB 1972) in Note 7.
534.04 Motion Under Fed. R. Civ. P. 41(b) or 50(a) Not Available	Added new Note 1, citing: <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1654 (TTAB 2007). Also added new Note 2, citing: <i>Kasco Corp. v. Southern Saw Service, Inc.</i> , 27 USPQ2d 1501, 1504 n.2 (TTAB 1993); and <i>No Nonsense Fashions, Inc. v. Consolidated Foods Corp.</i> , 226 USPQ 502, 506 n.2 (TTAB 1985).
535 Motion For Order to Show Cause Under 37 CFR § 2.134(b)	Conformed references to Trademark Act to stylistic standard. In third paragraph, added language explaining effect of abandonment of registered mark prior to proceeding.
	Added new Note 2, citing <i>C.H. Guenther & Son, Inc. v. Whitewing Ranch Co.</i> , 8 USPQ2d 1450, 1452 n.4 (TTAB 1988).
536 Motion For Order to Show Cause Under 37 CFR § 2.128(a)(3)	Revised to reflect current Board practice that even if order to show cause under 37 CFR § 2.128(a)(3) is discharged, plaintiff must file a motion to reopen time to submit a main brief.
537 Motion For Leave to Exceed Page Limit For Brief On Case	Added new seventh paragraph contrasting brief lengths applicable to motions. Added <i>First Niagara Insurance Brokers Inc. v. First Niagara Financial Group Inc.</i> , 77 USPQ2d 1334, 1336 n.4 (TTAB 2005), <i>rev'd on other grounds</i> , 81 USPQ2d 1375 (Fed. Cir. 2007) to Note 1.
538 Motion For Leave to File Amicus Brief	Changed “defendant” to “a party to the proceeding” in fourth paragraph.
539 Motion to Strike Brief On Case	Amended second paragraph to clarify that objections to contents of brief should be stated in responsive brief, if allowed.
	Amended fourth paragraph to indicate that rules to not provide for surreply as well as rejoinder brief and that any such brief filed will be stricken.
	Amended fifth paragraph to add that, with one exception, evidence may not be submitted with a brief; added new Note 4 in support, citing: <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1955 (TTAB 2008).
	In Note 3, added parenthetical to <i>Fortunoff Silver Sales, Inc. v. Norman Press, Inc.</i> , 225 USPQ 863, 863 n.3 (TTAB 1985), and changed “reply” to “surreply.”
540 Motion For Augmented	Clarified composition of Board and titles of Board

Panel Hearing	professionals in first paragraph and added new Note 1 in support, citing: Trademark Act § 17(b), 15 U.S.C. § 1067(b).
	Added <i>In re Lebanese Arak Corp.</i> , 94 USPQ2d 1215 (TTAB 2010); <i>Eurostar, Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG</i> , 34 USPQ2d 1266 (TTAB 1995); and <i>In re Alappat</i> , 33 F.3d 1526, 31 USPQ2d 1545, 1547 (Fed. Cir. 1994) to Note 3.
	Added <i>In re Lebanese Arak Corp.</i> , 94 USPQ2d 1215 (TTAB 2010); <i>In re Active Ankle Systems, Inc.</i> , 83 USPQ2d 1532, 1534 (TTAB 2007); and <i>Eurostar, Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG</i> , 34 USPQ2d 1266 (TTAB 1995) to Note 4; deleted " <i>In re Alappat</i> , 33 F.3d 1526, 31 USPQ2d 1545, 1547 (Fed. Cir. 1994) (Section 7 grants Director authority to designate the members of a panel and expanded panel)" from Note 4.
541 Motion To Change Oral Hearing Date; For Additional Time	Section Heading only.
541.01 Motion to Change Oral Hearing Date	Amended first paragraph to add ACR language.
	Amended third paragraph to update preferred means of filing motion to reset hearing and amended fourth paragraph to advise the reader that in most cases repeated requests to reset an oral hearing will be denied.
541.02 Motion For Additional Time For Oral Argument	Amended first paragraph to include statement advising reader that motions for additional time are disfavored.
	Amended second paragraph regarding extension of time sua sponte by panel.
542 Motion For Leave to Audiotape, Videotape, or Otherwise Electronically Record Oral Hearing (new title)	Amended first paragraph regarding other electronic recordings of hearings; relocated information regarding court reporter usage to first paragraph from fourth paragraph. Also added new fifth paragraph regarding remote attendance at oral hearing.
543 Motion For Reconsideration of Final Decision	Amended third paragraph clarifying time to file reply brief.
	Added new sixth paragraph addressing multiple requests for reconsideration.
	Amended parenthetical to <i>Amoco Oil Co. v. Amerco, Inc.</i> , 201 USPQ 126 (TTAB 1978) in

	Note 4.
	Changed “different results reached on reh’g” to “reh’g granted” within citation to <i>Steiger Tractor Inc. v. Steiner Corp.</i> , 221 USPQ 165 (TTAB 1984) <i>reh’g granted</i> , 3 USPQ2d 1708 (TTAB 1984) in Note 5.
544 Motion For Relief From Final Judgment	Deleted reference to old Fed. R. Civ. P. 60(b) and added amended Fed. R. Civ. P. 60(b); added reference to Fed. R. Civ. P. 60(c)(1) and Fed. R. Civ. P. 6(b)(2).
	Amended second paragraph clarifying that procedure is available only for grants of summary judgment, not denials.
	Amended fourth paragraph to clarify that time to file motion will not be extended.
	Added <i>Pramil S.R.L. v. Michael Farah</i> , 93 USPQ2d 1093 (TTAB 2009); and <i>Kraft Foods, Inc. v. Desnoes & Geddes Ltd.</i> , 64 USPQ2d 1154 (TTAB 2002) to Note 2.
	Deleted following from Note 2: “ <i>See also Marriott Corp. v. Pappy’s Enterprises, Inc.</i> , 192 USPQ 735 (TTAB 1976) (reasons (1) and (6) denied; opposer’s failure to maintain communication between its staff counsel due to inattention and carelessness is not excusable neglect and does not constitute “inadvertence”) and <i>Williams v. Five Platters, Inc.</i> , 181 USPQ 409 (TTAB 1974), <i>aff’d</i> , 510 F.2d 963, 184 USPQ 744 (CCPA 1975) (reason (1) denied; petitioner’s arguments that its neglect resulted from docketing errors and the absence of petitioner’s counsel from its office do not constitute excusable neglect). In addition, see <i>Syosset Laboratories, Inc. v. TI Pharmaceuticals</i> , 216 USPQ 330 (TTAB 1982) (reasons (1), (3), and (6)); <i>Lee Byron Corp. v. H.D. Lee Co.</i> , 203 USPQ 1097 (TTAB 1979) (reason (2)); <i>Amoco Oil Co. v. Amerco, Inc.</i> , 201 USPQ 126 (TTAB 1978) (reason (2)); <i>Bass Anglers Sportsman Society of America, Inc. v. Bass Pro Lures, Inc.</i> , 200 USPQ 819 (TTAB 1978) (reason (1)); and <i>Columbia Broadcasting System, Inc. v. De Costa</i> , 165 USPQ 95 (TTAB 1970) (reason (6)).”
544 Motion For Relief From Final Judgment	Added Fed. R. Civ. P. 6(b)(2); and <i>Pramil S.R.L. v. Michael Farah</i> , 93 USPQ2d 1093 (TTAB 2009) to Note 3.

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 600**

TBMP SECTION	NATURE OF CHANGE
601 Withdrawal by Opposition or Cancellation Plaintiff	Section Heading only.
601.01 Withdrawal by Opposer	Amended paragraph 3 by adding a sentence about the signature requirement for "written consent."
	Amended Note 1 by adding parenthetical (the title) to 37 CFR § 2.114(c).
	Amended Note 2 by rearranging order of cases.
	Added new Note 3, referencing: 37 CFR § 2.193(c)(1).
601.02 Withdrawal by Petitioner	Amended paragraph 3 by adding a sentence about the signature requirement for "written consent." Added a reference to TBMP § 113 to be consistent with similar paragraph in TBMP § 601.01.
	Amended Note 1 by adding parenthetical (the title) to 37 CFR § 2.106(c).
	Amended Note 2 by rearranging order of cases and added new case moved from Note 3: <i>Sunrise Jewelry Mfg. Corp. v. Fred S.A.</i> , 175 F.3d 1322, 50 USPQ2d 1532, 1536 (Fed. Cir. 1999).
	Amended Note 3 by moving reference to <i>Sunrise Jewelry Mfg. Corp. v. Fred S.A.</i> , 175 F.3d 1322, 50 USPQ2d 1532, 1536 (Fed. Cir. 1999) to Note 2 and adding reference to 37 CFR § 2.193(c)(1).
601.03 Effect of Motion for Judgment	Deleted reference to "judgment on the pleadings" and substituted "more definite statement."
602 Withdrawal by Opposition or Cancellation Defendant	Section Heading only.
	Added new paragraphs 1 and 2 to highlight the different bases for applications and

	registrations under the Trademark Act and to clarify differences between applications filed under Trademark Act § 66(a) and §§ 1 and 44.
	Amended paragraph 4 to add a sentence about the signature requirement for "written consent."
	Amended paragraph 5 to add parenthetical (the title) to 37 CFR § 2.135.
	Amended paragraph 6 by adding the words "in its entirety" after "... delete an opposed class."
	Added new paragraph 7 to address the situation where multiple oppositions are brought against a single application.
	Amended paragraph 8 to address use of the ESTTA filing system when filing an abandonment of an opposed application, and cautioning not to use the TEAS system when filing an abandonment of an opposed application.
	Amended paragraph 9 to add reference to TBMP § 218.
	Amended paragraph 10 to delete phrases which appeared to limit abandonment prior to publication only to a "failure to respond to Office Action." Deleted "revive" and substituted "Director" in reference to petitions; and referred to both 37 CFR §§ 2.66 and 2.146 "as appropriate."
	Added reference to TBMP § 602.02(b) in paragraph 11.
	Revised paragraph 12 to address Trademark Act § 66(a) ("Madrid") registrations.
	Added a caption, "Other exemplary situations involving applicant's abandonment of its application," after paragraph 12 and before paragraph 13.
	Added new Note 1, citing: 37 CFR §§ 2.34(b)(3) and 2.35; TMEP §§ 806.01(e) and 1904.01(a), and, by comparison, TMEP §1904.09.
	Amended Note 3 by adding parenthetical to <i>Goodway Corp. v. International Marketing Group Inc.</i> , 15 USPQ2d 1749, 1750 (TTAB 1990). Moved and added "see also" to <i>Fleming Companies Inc. v. Thriftway Inc.</i> , 21 USPQ2d 1451, 1453 (TTAB 1991), <i>aff'd</i> , 26

	USPQ2d 1551 (S.D. Ohio 1992); added <i>Kraft Foods, Inc. v. Desnoes & Geddes Ltd.</i> , 64 USPQ2d 1154, 1157 (TTAB 2002) with "cf" and explanatory parenthetical.
	Added new Note 5, citing: 37 CFR § 2.193(c)(1).
	In Note 6, moved <i>Aromatique Inc. v. Lang</i> , 25 USPQ2d 1359, 1361 (TTAB 1992) to first in string cite. Added <i>Sharp Kabushiki Kaisha v. ThinkSharp Inc.</i> , 448 F.3d 1368, 79 USPQ2d 1376 (Fed. Cir. 2006) with "But cf" and explanatory parenthetical; amended parenthetical and added pin cite to <i>Johnson & Johnson v. Bio-Medical Sciences, Inc.</i> , 179 USPQ 765, 766 (TTAB 1973).
	Added new Note 7, citing: 37 CFR § 2.135.
	Added "cf." to Note 9.
	Added parenthetical to <i>First National Bank of Boston</i> , 199 USPQ 296, 301 (TTAB 1978) in Note 10; deleted reference to TBMP § 218.
	Added reference to TMEP § 1505.04(a) in Note 13.
	Added reference to TMEP § 1904.08 in Note 14.
	Added new Note 15 to explain the difference between a "cancellation" and "renunciation" for Madrid registrations.
	Added new Note 17 citing, by comparison: <i>Montana v. United States</i> , 440 U.S. 147 (1979); <i>Mayer/Berkshire Corp. v. Berkshire Fashions, Inc.</i> , 424 F.3d 1229, 76 USPQ2d 1310 (Fed. Cir. 2005); <i>Bingaman v. Dept. of the Treasury</i> , 127 F.3d 1431 (Fed. Cir. 1997); and, under preface "see generally," 6 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION: <i>Res Judicata and Changes in the Facts</i> , § 32:88 (2010).
602.02 Withdrawal by Respondent	Subsection Heading only.
	Added new paragraph 1 to clarify that a Trademark Act § 66(a) registration ("Madrid") is actually a registered extension of protection of an international registration.
	Deleted wording in paragraph 2 about the requirement to submit either an original

	certificate or a statement it was lost. Added information that it is acceptable to file a surrender of a Trademark Act § 66(a) registration either with the USPTO or the International Bureau ("IB"). Deleted sentence indicating the surrender must be filed with IB.
	In Paragraph 4, added sentence concerning the effect of deleting less than all the goods and/or services from a single class for Trademark Act §§ 1 and 44 registrations. Deleted language in sentence concerning a request for cancellation as to some of the goods and services in a Trademark Act § 66(a) registration.
	In Paragraph 5, deleted sentence that 37 CFR § 2.134 is not applicable to Trademark Act § 66(a) registrations; revised to address Trademark Act § 66(a) registrations.
	Added new paragraph 6 to address partial restriction of Trademark Act § 66(a) registrations.
	In paragraph 7, explained the use of the ESTTA filing system when filing a surrender of a registration that is the subject of a petition to cancel and cautions practitioners not to use the TEAS system when filing a surrender of a registration that is the subject of a petition to cancel. Also deleted the following: "In the case of a voluntary cancellation of a 66(a) registration, the registrant should file with the Board and serve upon every other party to the proceeding, a copy of the appropriate notice or request for cancellation that has been filed with the International Bureau."
	In Note 3, added reference to TMEP § 1906.01(e).
	Added new Note 6, citing: <i>G&W Labs., Inc. v. GW Pharma Ltd.</i> , 89 USPQ2d 1571, 1574 (TTAB 2009).
	Added new Note 7, referencing: 37 CFR § 2.172 and TMEP §§ 1403.07 and 1609.03.
	Added new Note 8, referencing: TMEP §§ 1904.13(a), 1904.02(c) and 1904.02(c)(ii).
	Added new Note 9, referencing TMEP § 1904.13(a).
	Added new Note 10, referencing TMEP

	§ 1904.15.
	Added new Note 11, referencing 15 U.S.C. § 1114j(a) and citing, by comparison, <i>G&W Labs., Inc. v. GW Pharma Ltd.</i> , 89 USPQ2d 1571, 1574 (TTAB 2009).
	Added new Note 12, referencing TMEP § 1904.09.
	Added new Note 13, referencing 37 CFR § 2.134(a).
	Added new Note 15, citing, by comparison: <i>Cf. Montana v. United States</i> , 440 U.S. 147 (1979); <i>Mayer/Berkshire Corp. v. Berkshire Fashions, Inc.</i> , 424 F.3d 1229, 76 USPQ2d 1310 (Fed. Cir. 2005); <i>Bingaman v. Dept. of the Treasury</i> , 127 F.3d 1431 (Fed. Cir. 1997); and citing, under preface “ <i>See generally</i> ,” 6 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION: Res Judicata and Changes in the Facts, § 32:88 (2010).
602.02(b) Cancellation Under Section 8 or 71; Expiration Under Section 9 or 70	Updated reference to 37 CFR § 7.36(b)(3) and (c) to reflect rules changes.
	In paragraph 1, added a preamble referring to Trademark Act §§ 1 and 44 registration to differentiate from paragraph 2 referring to § 66(a) registrations.
	Revised section to emphasize the differences between Trademark Act §§ 8, 9, 70, and 71 and to include information about registered extensions of protection of Trademark Act § 66(a) (Madrid) registrations.
	Added new paragraph 12 to include information about notice of registration where respondent demonstrates lack of intent to moot proceedings and petitioner elects to proceed.
	Deleted final paragraph, advising reader that while 37 CFR § 2.134 is not applicable to Trademark Act § 66(a) (Madrid) registrations, “policy considerations underlying the rule are applicable,” because this information has been included in amendments to previous paragraphs in this subsection.
	Added information that a § 71 affidavit is to be filed with the USPTO in Note 2. Added

	references to 15 U.S.C. § 1114k and TMEP §§ 1613 and 1904.10.
	Added new references to TMEP §§ 1614 and 1905 in Note 3.
	In Note 5, added pin cite to <i>Marshall Field & Co. v. Mrs. Fields Cookies</i> , 11 USPQ2d 1154, 1156 (TTAB 1989); deleted "T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: The Rules Are Changing</i> , 74 Trademark Rep. 269, 277 (1984)."
	In Note 6, deleted reference to "Notice of Final Rulemaking, 48 Fed. Reg. 23,122, 23,133 (May 23, 1983), 1031 TMOG 13, 23 (June 21, 1983)"; added citation information for <i>Marshall Field & Co. v. Mrs. Fields Cookies</i> , 11 USPQ2d 1154, 1156 (TTAB 1989); deleted "T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: The Rules Are Changing, supra.</i> "
	Added pin cite to <i>Marshall Field & Co. v. Mrs. Fields Cookies</i> , 11 USPQ2d 1154, 1156 (TTAB 1989) in Note 8.
	Corrected cite to <i>Abraham's Seed v. John One Ten</i> , 1 USPQ2d 1230 (TTAB 1986) in Note 9.
	In Note 10, changed pin cite to <i>Marshall Field & Co. v. Mrs. Fields Cookies</i> , 11 USPQ2d 1154 (TTAB 1989) (replacing "1156" with "1154."
	Added new Note 12, citing <i>Fishing Processors, Inc. v. Fisher King Seafoods Ltd.</i> , 83 USPQ2d 1762, 1765 (TTAB 2007).
603 Withdrawal by Interference or Concurrent Use Applicant	Updated reference to 37 CFR § 2.68 to reflect rules changes.
	In paragraph 2, added a reference to TMEP § 1106.05, and deleted sentence about republication of a Trademark Act § 66(a) application.
	Revised paragraph 4 to encourage use of the ESTTA system for filing of abandonments and caution against using the TEAS system for filing abandonments.
	Add new paragraph 6 to explain that applications based solely on Trademark Act §§ 44 or 66(a) are not subject to concurrent use proceedings and cannot have more than one basis.

	Deleted from Note 4: Trademark Act §§ 68 and 69; substituted a reference to 37 CFR § 2.119(a).
	Added new Note 6, referencing: 37 CFR § 2.99(g) and TMEP § 1207.04(b).
	Added new Note 7, referencing: 37 CFR § 2.34(b)(3) and TMEP § 1904.01(a).
604 Consent to Judgment	No substantive changes.
605 Settlement	Chapter Heading only.
605.01 In General	Revised to explain that Board willing to suspend "for reasonable times"; and deleted "generous" from statement of Board's discovery practice.
605.02 Suspension for Settlement Negotiations	In paragraph 1, added a sentence encouraging use of ESTTA to file "consent motions."
	In paragraph 2, clarified that a 6-month suspension may be granted upon a motion or be imposed sua sponte; clarified that a progress report need not disclose confidential information or matter; changed "firm" to "anticipated" timetable for resolution; clarified that consented suspension requests may be denied even if a status report provided; added reference to TBMP § 510.
	Added new Paragraph 3 to inform reader about unavailability of suspension or extension following answer until discovery conference held.
	Added new Notes 2 and 3 referencing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42245 (August 1, 2007).
605.03 Settlement Agreements	Subsection Heading only.
605.03(a) In General	Added new Note 1 citing: 37 CFR §§ 2.134 and 2.135.
605.03(b) With Amendment of Subject Application or Registration	Paragraph 3: added "in its entirety" to differentiate deletion of an entire class instead of deletion of some goods or services within a single class; added references to TBMP §§ 602.01 and 602.02.
	Deleted from paragraph 4 that 37 CFR § 2.134 is not applicable to Trademark Act § 66(a) (Madrid) registrations; added a transition to the

	introduction of the paragraph; added additional information about the deletion of only some of the goods and services in a single class Trademark Act § 66(a) registration.
	Added references in Note 3 to TMEP §§ 1609.02(a) and 1904.02(j).
	Deleted from Note 4: "Louise E. Rooney, <i>TIPS FROM THE TTAB: Rule 2.133 Today</i> , 81 Trademark Rep. 408 (1991)."
	Added new Note 5 referencing, by comparison: Trademark Act § 70 and 37 CFR § 2.172.
	Added new Note 6 referencing: TMEP § 1904.15.
605.03(c) With Amendment of Plaintiff's Pending Application	No substantive changes.
605.03(d) Breach of Settlement Agreement	Added new case to Note 1: <i>Bausch & Lomb, Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1528 (TTAB 2008).
605.03(e) Effect of Judgment Based Upon Agreement	Deleted from Note 1: "Marc A. Bergsman, <i>TIPS FROM THE TTAB: The Effect of Board Decisions in Civil Actions; Claim Preclusion and Issue Preclusion in Board Proceedings</i> , 80 Trademark Rep. 540 (1990)."
605.03(f) Consent Orders	Deleted the following: "That is, the Board does not, based simply upon a joint request by the parties that it does so, enter, approve, or otherwise adopt as its own findings, as if on the merits, stipulated findings of fact and/or conclusions of law, without any consideration by the Board of evidence properly adduced during the course of the proceeding. Rather, the Board makes findings of fact, and conclusions of law, on the merits of the case only as warranted by the evidence of record upon motion for summary judgment or at final hearing."
606 Effect on Counterclaim	No substantive changes.

INDEX TO CHANGES IN THIRD EDITION CHAPTER 700

TBMP SECTION	NATURE OF CHANGE
701 Time of Trial	Amended reference to 37 CFR §§ 2.121(a) and (d) to conform to rule changes. Added new reference to 37 CFR § 2.121(e).
	Amended first paragraph to more closely discuss contents of 37 CFR §§ 2.116(b) and 2.121, as amended.
	Amended second paragraph to discuss pretrial disclosures.
	Amended paragraph 5 to address pretrial disclosures and expert disclosures.
	Amended paragraph 6 to address pretrial disclosures and expert disclosures.
	Added new Note 5, referencing: 37 CFR § 2.121(e).
	Added new case to Note 7: <i>Baseball America Inc. v. Powerplay Sports</i> , 71 USPQ2d 1844, 1846 n.8 (TTAB 2004).
	Amended parenthetical to <i>PolyJohn Enterprises Corp. v. 1-800-Toilets, Inc.</i> , 61 USPQ2d 1860, 1861 (TTAB 2002) in Note 10 by changing “to reopen” to “periods not reopened.”
702 Pretrial Disclosures; Manner Of Trial; And Introduction Of Evidence (new title)	Updated title from “Manner of Trial and Introduction of Evidence – In General” and created new subsections 702.01 – 702.04 under Section 702.
	Added new references to 37 CFR §§ 2.121(e) and Fed. R. Civ. P. 26(a)(3) regarding pretrial disclosures.
702.01 Pretrial Disclosures (new section)	This is a new subsection discussing pretrial disclosures, objections thereto, and failure to make disclosures.
	Added new Note 1, referencing: 37 CFR § 2.121(e); and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Added new Note 2, citing: <i>Jules Jurgensen/Rhapsody Inc. v. Baumberger</i> , 91 USPQ2d 1443, 1444 (TTAB 2009).
	Added new Note 3, referencing: Miscellaneous

	Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Added new Note 4, referencing: 37 CFR § 2.121(e); and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Added new Note 5, referencing: 37 CFR § 2.121(e); and citing: <i>Jules Jurgensen/Rhapsody Inc. v. Baumberger</i> , 91 USPQ2d 1443, 1444 - 45 (TTAB 2009).
	Added new Notes 6-9, referencing: 37 CFR § 2.121(e).
	Added new Note 10, referencing: 37 CFR § 2.123(e)(3); 37 CFR § 2.118; and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Added new Note 11, citing: <i>Jules Jurgensen/Rhapsody Inc. v. Baumberger</i> , 91 USPQ2d 1443, 1444 (TTAB 2009).
	Added new Note 12, referencing: 37 CFR § 2.118; and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007).
	Added new Note 13, referencing: 37 CFR § 2.118; and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42247 (August 1, 2007).
	Added new Note 14, referencing: 37 CFR § 2.123(e)(3) and citing: <i>Jules Jurgensen/Rhapsody Inc. v. Baumberger</i> , 91 USPQ2d 1443, 1444 (TTAB 2009).
702.02 Introduction of Evidence (new subsection)	This is a new subsection, covering that portion of the text in original Section 702 dealing with the introduction of evidence. Added new Note 3, referencing <i>Coach Services Inc. v. Triumph Learning LLC</i> , 96 USPQ2d 1600 (TTAB 2010).
702.03 – Manner of Trial	This is a new subsection, covering the last three paragraphs of text from the original Section 702. Added references to TBMP §§ 102.03 and 502.01 in first paragraph.
	Amended second paragraph to include clarification that hearings are at the Board.
	Amended paragraph 3 to account for electronic filings. Deleted the following from paragraph 3:

	“The papers and other materials filed with the Board during the course of an inter partes proceeding are kept, during the course of the proceeding, in the physical possession of the Board.”
	Added new paragraph 4, referencing: TBMP § 121.
	Added new paragraph 5 noting that parties may consider ACR as an alternative to trial and referencing TBMP §§ 528.05(a)(2); 702.04; and 705.
	Added new Note 5, referencing: 37 CFR § 2.129(a).
702.04 Accelerated Case Resolution (new section)	New section heading only regarding ACR.
702.04(a) In General (new subsection)	This is a new subsection, introducing ACR as an alternative to a traditional Board proceeding. Paragraph 1 outlines the typical ACR case; paragraph 2 explains the purpose of ACR; paragraph 3 addresses the most appropriate cases for ACR; and paragraphs 4 and 5 discuss implementation of ACR. Paragraphs 6 and 7 of this subsection address limitations to discovery and trial under ACR; paragraphs 8 and 9 note standards of proof and appeals, and paragraph 10 references the website at which the Board maintains a list of ACR cases.
	Added new Note 1, citing: <i>Miller Brewing Co. v. Coy International Corp.</i> , 230 USPQ 675 (TTAB 1986); and <i>Acuff-Rose Music, Inc. v. Jostens, Inc.</i> , 47 USPQ2d 1953, 1954-55 (2d Cir. 1998).
	Added new Note 2, citing: <i>Target Brands, Inc. v. Shaun N.G. Hughes</i> , 85 USPQ2d 1676 (TTAB 2007).
	Added new Note 3, citing: <i>Ballet Tech Foundation Inc. v. Joyce Theater Foundation Inc.</i> , 89 USPQ2d 1262, 1226 n.9 (TTAB 2008).
	Added new Note 4, citing: <i>Hewlett-Packard Development Co. v. Vudu Inc.</i> , 92 USPQ2d 1630, 1634 n.6 (TTAB 2009).
	Added new Note 5, citing: <i>Promgirl, Inc. v. JPC Co.</i> , 94 USPQ2d 1759, 1762 (TTAB 2009).
	Added new Note 6, citing: <i>Dan Robbins & Associates, Inc. v. Questor Corporation</i> , 599 F.2d 1009, 202 USPQ 100 (CCPA 1979).
	Added new Note 7, citing: See 37 CFR § 2.145.

702.04(b) ACR Using Summary Judgment Briefs (new subsection)	This is a new subsection, referencing TBMP § 528.05(a)(2); and describing in paragraph 1 an ACR case using summary judgment briefs and accompanying evidentiary submissions during a combined trial and briefing period; discussing stipulations in paragraph 2; and the procedure for submission of summary judgment briefs in paragraph 3. Paragraph 4 informs reader that the parties to an ACR proceeding using summary judgment briefs must stipulate to the Board's resolution of disputed facts; and paragraph 5 encourages reader to submit stipulation in event ACR is agreed-upon early in the case.
	Added new Note 1, citing: <i>Brooks v. Creative Arts By Calloway LLC</i> , 93 USPQ2d 1823, 1827 (TTAB 2009).
	Added new Notes 2 and 3, referencing: 37 CFR §§ 2.127(a) and 2.127(e)(1).
	Added new Notes 4 and 5, referencing 37 CFR § 2.127(a).
702.04(c) ACR Conversion - Summary Judgment Briefs (new subsection)	This is a new subsection, referencing TBMP § 528.05(a)(2); and informing reader in paragraph 1 that in appropriate cases, Board may treat parties' summary judgment briefs and evidence under ACR; and in paragraph 2 that parties must stipulate to Board's resolution of any disputed facts.
	Added new Note 1, citing: <i>Freeman v. National Association of Realtors</i> , 64 USPQ2d 1700 (TTAB 2002); and <i>Miller Brewing Co. v. Coy International Corp.</i> , 230 USPQ 675 (TTAB 1986).
702.04(d) ACR using Stipulated Record and Trial Briefs (new subsection)	This is a new subsection, referencing TBMP § 705; and explaining in paragraphs 1 and 2 that the parties under the stipulated record and trial briefs ACR model stipulate to the admissibility of most of the record and agree to have the Board decide disputed facts; noting in paragraph 3 that this method is highly effective; and noting in paragraphs 4, 5, and 6 that while testimony depositions are still available, parties willing to forgo testimony should file a stipulation to that effect with the Board and that parties may not object to admissibility of evidence stipulated into the record. Paragraph 7 describes formatting limitations on ACR trial briefs and that only plaintiff may file a reply brief.

	Added new Note 1, citing: <i>Eveready Battery Co. v. Green Planet Inc.</i> , 91 USPQ2d 1511 (TTAB 2009); and <i>Target Brands, Inc. v. Shaun N.G. Hughes</i> , 85 USPQ2d 1676 (TTAB 2007).
	Added new Note 2, citing: <i>Eveready Battery Co. v. Green Planet Inc.</i> , 91 USPQ2d 1511 (TTAB 2009); <i>Target Brands, Inc. v. Shaun N.G. Hughes</i> , 85 USPQ2d 1676 (TTAB 2007); <i>Zimmerman v. National Association of Realtors</i> , 70 USPQ2d 1425 (TTAB 2004); and <i>Devries v. NCC Corporation</i> , 227 USPQ 705 (TTAB 1985).
	Added new Note 3, citing: <i>Target Brands Inc. v. Hughes</i> , 85 USPQ2d 1676, 1678 (TTAB 2007).
	Added new Note 4, citing: <i>Brooks v. Creative Arts By Calloway LLC</i> , 93 USPQ2d 1823, 1827 (TTAB 2009).
	Added new Notes 5 and 6, referencing: 37 CFR § 2.128(b).
702.04(e) Utilizing Stipulations in Non-ACR Board cases (new subsection)	This is a new subsection to advise reader that ACR-type stipulations are available in any Board proceeding and to provide the website address where a list of Board ACR cases may be found.
	Added new Note 1, citing: <i>Brooks v. Creative Arts by Calloway, LLC</i> , 93 USPQ2d 1823 (TTAB 2010); <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042 (TTAB 2009); <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581 (TTAB 2008); <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i> , 89 USPQ2d 1844 (TTAB 2008); <i>Micro Motion Inc. v. Danfoss A/S</i> , 49 USPQ2d 1628 (TTAB 1998); <i>Domino's Pizza Inc. v. Little Caesar Enterprises Inc.</i> , 7 USPQ2d 1359 (TTAB 1988); <i>Wilderness Group, Inc. v. Western Recreational Vehicles, Inc.</i> , 222 USPQ 1012 (TTAB 1984); and <i>Hayes Microcomputer Products, Inc. v. Business Computer Corporation</i> , 219 USPQ 634 (TTAB 1983).
702.05 Overly Large Records	This is a new section cautioning parties that the Board views with disfavor the submission of cumulative, irrelevant evidence at trial.
	Added new Note 1, citing: <i>Stuart Spector Designs Ltd. v. Fender Musical Instruments, Corp.</i> , 94 USPQ2d 1549 (TTAB 2009); <i>Carefirst of Maryland Inc. v. FirstHealth of the Carolinas, Inc.</i> , 77 USPQ2d 1492, 1495 (TTAB 2005); <i>Blue Man Productions v. Tarmann</i> , 75 USPQ2d 1811, 1814

	(TTAB 2005), <i>rev'd on other grounds</i> , No. 05-2037, slip op. (D.D.C. Apr. 3, 2008).
	Added new Note 2, citing: <i>Carefirst of Maryland Inc. v. FirstHealth of the Carolinas, Inc.</i> , 77 USPQ2d 1492, 1495 (TTAB 2005).
	Added new Note 3, citing: <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031, 1040 n.19 (TTAB 2010); <i>Blue Man Productions v. Tarmann</i> , 75 USPQ2d 1811, 1814 (TTAB 2005), <i>rev'd on other grounds</i> , No. 05-2037, slip op. (D.D.C. Apr. 3, 2008).
	Added new Note 4, citing: <i>Sports Authority Michigan Inc. v. PC Authority Inc.</i> , 63 USPQ2d 1782, 1787 (TTAB 2001), <i>citing Wear-Guard Corp. v. Van Dyne-Crotty Inc.</i> , 18 USPQ2d 1804, 1805 n.1 (TTAB 1990) and <i>Marion Laboratories Inc. v. Biochemical/Diagnostics Inc.</i> , 6 USPQ2d 1215, 1217 n.9 (TTAB 1988).
	Added new Note 5, citing: <i>Blue Man Productions v. Tarmann</i> , 75 USPQ2d 1811, 1814 (TTAB 2005), <i>rev'd on other grounds</i> , No. 05-2037, slip op. (D.D.C. Apr. 3, 2008).
	Added new Note 6, citing: <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031 (TTAB 2010).
703 Taking And Introducing Testimony	Section Heading only.
703.01 Oral Testimony Depositions	Subsection Heading only.
703.01(a) In General	Deleted reference to TBMP § 404.02 in paragraph 1.
703.01(b) Form of Testimony	Amended paragraph 4 to inform reader that party may cross-examine a witness in person, where the witness's testimony has been submitted on affidavit or by declaration.
	Added new case to Note 5: <i>Tri-Star Marketing LLC v. Nino Franco Spumanti S.R.L.</i> , 84 USPQ2d 1912, 1914 (TTAB 2007); and changed parenthetical to <i>Hilson Research Inc. v. Society for Human Resource Management</i> , 27 USPQ2d 1423, 1425 n.8 (TTAB 1993) in Note 5 by replacing the word "considered" with the word "treated."
	Added new Note 6, citing: <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1044 (TTAB 2009).
	Added new case to Note 7: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1862 (TTAB 2009).

703.01(c) Time for Taking Testimony	Corrected citation to 37 CFR § 2.121(a) from “37 CFR § 2.121(a)(1)” and added new cases to Note 1: <i>Fossil Inc. v. Fossil Group</i> , 49 USPQ2d 1451, 1454 n.1 (TTAB 1998); and, by comparison, <i>Of Counsel Inc. v. Strictly of Counsel Chartered</i> , 21 USPQ2d 1555, 1556 n.2 (TTAB 1991).
703.01(d) Time and Place of Deposition	No substantive changes.
703.01(e) Notice of Deposition	Amended first paragraph to add sentence regarding manner in which Board counts days in the context of noticing depositions. Amended second paragraph to clarify that notice of oral deposition need not be filed with the Board.
	Added new cases to Note 1: <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1653 (TTAB 2007); <i>Gaudreau v. American Promotional Events, Inc.</i> , 82 USPQ2d 1692, 1696 (TTAB 2007).
	Added new Note 2, citing: <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1653 (TTAB 2007).
	Deleted the following from Note 5 to: “Rany L. Simms, <i>TIPS FROM THE TTAB: Whether and When to File Papers During Trademark Proceedings</i> , 67 Trademark Rep. 175 (1977).”
703.01(f) Securing Attendance of Unwilling Adverse Party or Nonparty	Subsection Heading only.
703.01(f)(1) In General	Deleted the following from Note 1: “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 396-397 (1985); and Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296 (1985).”
703.01(f)(2) Unwilling Witness Residing in United States	Added new case to Note 1: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1862 (TTAB 2009); deleted the following from Notes 1 and 3: “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323 (1985); and Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 29 (1985).”
	Added new paragraph 3 regarding subpoena for deposition of foreign corporate party in Fourth

	Circuit.
	Added new case to Note 1: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1862 (TTAB 2009); and deleted the following from Note 1: “Rany L. Simms, <i>TIPS FROM THE TTAB: Compelling the Attendance of a Witness in Proceedings Before the Board</i> , 75 Trademark Rep. 296 (1985).”
	Added new Note 2, citing: <i>Rosenruist-Gestao E Servicos LDA v. Virgin Enterprises Ltd.</i> , 511 F.3d 437, 85 USPQ2d 1385 (4th Cir. 2007), <i>cert. denied</i> , 128 S. Ct. 2508 (2008).
703.01(g) Persons Before Whom Depositions May be Taken	Amended recitation of Fed. R. Civ. P. 28 to reflect current wording.
	Updated reference to 8a, C. Wright, A. Miller & R. Marcus, <i>Federal Practice and Procedure: Civil 2d</i> § 2083 (3d ed. 2010) from “1994” in Note 3.
	Added new Note 4, citing: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1862 n.5 (TTAB 2009).
703.01(h) Examination of Witnesses	Amended recitation of 37 CFR § 2.123(e)(3) and Fed. R. Civ. P. 30(b)(4) [formerly Fed. R. Civ. P. 30(b)(7)] to reflect current wording.
	Amended paragraph 4 to specify that deposition may be taken by other remote means, not just telephone.
	Expanded paragraph 6 to include pretrial disclosures and added citation to TBMP § 707.03(b)(3).
	Amended paragraph 8 to clarify what type of information a witness may refuse to divulge in a deposition.
	Added new case to Note 4: <i>Sunrider Corp. v. Raats</i> , 83 USPQ2d 1648, 1654 (TTAB 2007).
	Added new Note 5, referencing: Fed. R. Civ. P. 30(b)(4).
	Amended parenthetical to <i>Tiffany & Co. v. Classic Motor Carriages Inc.</i> , 10 USPQ2d 1835, 1838 n.4 (TTAB 1989) in Note 6.
703.01(i) Form of Deposition and Exhibits	Amended recitation of 37 CFR § 2.126 to reflect rule change regarding submissions made on CD-ROM.
	Amended paragraph 3 to conform to change in 37 CFR § 2.126; and to point out Board preference for ESTTA filings.

	Amended paragraph 6 by updating reference from “37 CFR § 2.126(c)” to “37 CFR § 2.126(b);” and by deleting the following: “CD-ROM submissions are governed by 37 CFR § 2.126(b);” also simplified reference to ESTTA.
	Amended paragraph 7 to delete references to CD-ROM submissions and moved information regarding how to format exhibits to depositions for scanning, from paragraph 10 to paragraph 7.
	Amended paragraph 8 to include information for formatting exhibits to depositions submitted via ESTTA.
	Amended paragraph 9 to clarify that CD-ROM may be submitted electronically, as a means of filing an exhibit originally formatted on videotape or audio tape.
	Added new paragraph 10 to alert reader to possible degradation of quality of scanned documents and to advise how to minimize same.
	Amended paragraph 11 to recommend that confidential filings through ESTTA utilize the “confidential” filing option.
	Added new Note 7, defining various formats available for filing documents through ESTTA.
	Deleted the following from Note 8: “G. Douglas Hohein, <i>TIPS FROM THE TTAB: Potpourri</i> , 71 Trademark Rep. 163 (1981).”
703.01(j) Signature of Deposition by Witness	In first paragraph, changed “signature” to “signing;” and deleted the following from Note 1: “Gary D. Krugman, <i>TIPS FROM THE TTAB: Testimony Depositions</i> , 70 Trademark Rep. 353 (1980).”
703.01(k) Certification and Filing of Deposition	In first paragraph, amended paragraph to reflect new address for USPTO and raised the option of filing under ESTTA. In second paragraph, inserted text clarifying meaning of “promptly forward” in 37 CFR § 2.123(f)(2) by moving it to body of text from footnote, where it originally appeared.
	Added new Note 2, referencing <i>Notice of Final Rulemaking</i> , 63 Fed. Reg. 48,081 (September 9, 1998).
	Added new case to Notes 3 and 4: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 (TTAB 2009)
703.01(l) Testimony Deposition Must be Filed	Added new case to Note 2: <i>Motion Picture Ass’n of America Inc. v. Respect Sportswear Inc.</i> , 83 USPQ2d 1555, 1558 (TTAB 2007).

703.01(m) Service of Deposition	Amended paragraph 2 to add phrase regarding compelling service of the transcript and added <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1115 (TTAB 2009) to Notes 1 and 3 and new Note 4.
703.01(n) Correction of Errors in Deposition	In second paragraph, changed “made” to “corrected.” In final paragraph, deleted the following: “send a representative to the offices of the Board to make the listed corrections by writing them above the original text in the transcript” and replaced with: “file a substitute, corrected transcript with the Board.” Also deleted the footnote referencing Gary D. Krugman, <i>TIPS FROM THE TTAB: Testimony Depositions</i> , 70 Trademark Rep. 353 (1980) from Notes.
703.01(o) Objections to Testimony Depositions	No substantive changes.
703.01(p) Confidential or Trade Secret Material	Added reference to 37 CFR § 2.116(g) and renumbered 2.126(c) from “2.126(d)” to conform to rule change.
	Reformatted section to move statement of rules regarding treatment of redacted material to first paragraph of subsection; added new paragraph 2 to instruct reader on making confidential filings using ESTTA and regarding redacting confidential information from Board submissions filed via ESTTA; added new paragraph 3 to inform reader that 37 CFR § 2.116(g) provides for imposition of Board’s standard protective order and deleted the following from paragraph 3: “Confidential materials filed in the absence of a protective order are not regarded as confidential and are not kept confidential by the Board.”
	Deleted reference from paragraph 4 to the “files of applications and registrations that are the subject matter of pending proceedings before the Board” in discussion of materials available for public inspection and copying. Added information regarding over-designation of material as confidential.
	Added new Note 2, referencing: 37 CFR § 2.120(f).
	Added new Note 3, citing: <i>Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas, Inc.</i> , 77 USPQ2d 1492, 1495, n.5 (TTAB 2005).
	Added new Note 4, citing: <i>Wet Seal, Inc. v. FD</i>

	<i>Management, Inc.</i> , 82 USPQ2d 1629, 1633 n.6 (TTAB 2007).
	Added new Note 5, referencing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42248 (August 1, 2007).
	Deleted the following from Note 6: “Rany L. Simms, <i>TIPS FROM THE TTAB: Stipulated Protective Agreements</i> , 71 Trademark Rep. 653 (1981).”
	Added new Note 7, citing: <i>Edwards Lifesciences Corp. v. VigiLanz Corp.</i> , 94 USPQ2d 1399, 1402 (TTAB 2010); <i>Bass Pro Trademarks LLC v. Sportsman’s Warehouse Inc.</i> , 89 USPQ2d 1844, 1848 (TTAB 2008); and <i>General Motors Corp. v. Aristide & Co., Antiquaire de Marques</i> , 87 USPQ2d 1179, 1181 (TTAB 2008).
	Added new Note 8, citing: <i>Morgan Creek Productions Inc. v. Foria International Inc.</i> , 91 USPQ2d 1134, 1136 n.9 (TTAB 2009).
	Deleted the following footnote: “91. See <i>Harjo v. Pro-Football, Inc.</i> , 50 USPQ2d 1705 (TTAB 1999) (Board agreed to hold exhibits marked confidential for thirty days pending receipt of a motion for a protective order but cautioned that in the absence of such motion, the exhibits would be placed in the proceeding file), <i>rev’d on other grounds</i> , 284 F. Supp. 2d 96, 68 USPQ2d 1225 (D.D.C. 2003), <i>remanded</i> , 415 F.3d 44, 75 USPQ2d 1525 (D.C. Cir. 2005), <i>and aff’d</i> , 565 F.3d 880, 90 USPQ2d 1593 (D.C. Cir. 2009), <i>cert. denied</i> , 130 S. Ct. 631 (2009).”
	Deleted the following footnote: “93. Cf. 37 CFR § 2.120(f).”
703.02 Testimony Depositions on Written Questions	Section Heading only.
703.02(a) Depositions on Written Questions: When Available	No substantive changes.
703.02(b) Depositions on Written Questions: Before Whom Taken	Added new case, by example, to Note 1: <i>Corporacion Habanos S.A. v. Annacas, Inc.</i> , 88 USPQ2d 1785 (TTAB 2008)
703.02(c) Depositions on Written Questions: When Taken	Amended recitation of 37 CFR § 2.121(a) to reflect rule change; and updated reference from “37 CFR § 2.121(a)(1)” to “37 CFR § 2.121(a).” Amended

	parenthetical to <i>Marshall Field & Co. v. Mrs. Field's Cookies</i> , 17 USPQ2d 1652, 1652 (TTAB 1990) in Note 2 by changing “10 days of testimony” to “10 days of ‘opening’ of testimony.”
703.02(d) Depositions on Written Questions: Place of Deposition	No substantive changes.
703.02(e) Depositions on Written Questions: Notice of Deposition	Deleted reference to 37 CFR § 2.123(b) in Note 1.
703.02(f) Depositions on Written Questions: Securing Attendance of Unwilling Witness	No substantive changes.
703.02(g) Depositions on Written Questions: Examination of Witness	Amended paragraph 7 to address attempts to engage witnesses in deposition.
703.02(h) Depositions on Written Questions: Form, Signature and Certification of Deposition	No substantive changes.
703.02(i) Depositions on Written Questions: Service, Correction and Filing of Deposition	Clarified, in second paragraph, that reference to deposition is testimony deposition upon written questions.
703.02(j) Testimony Depositions on Written Questions Must be Filed	No substantive changes.
703.02(k) Depositions on Written Questions: Objections to Deposition	No substantive changes.
703.02(l) Depositions on Written Questions: Confidential or Trade Secret Material	No substantive changes.
703.02(m) Depositions on Written Questions: Utility	Deleted the following from Note 1: “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 397 (1985).”
	Added new case, by comparison, to Note 2: <i>Rosenruist-Gestao E Servicos LDA v. Virgin Enterprises Ltd.</i> , 511 F.3d 437, 85 USPQ2d 1385 (4th Cir. 2007), <i>cert. denied</i> , 128 S. Ct. 2508 (2008).
704 Introducing Other Evidence	Section Heading only.

704.01 In General	Deleted reference to TBMP § 702.
704.02 Notice of Reliance – Generally	No changes made.
704.03 Applications and Registrations	Subsection Heading only.
704.03(a) Subject of Proceeding	Amended first paragraph to instruct reader not to file copy of the subject application or registration.
	Amended second paragraph to clarify that alleged date of use of the mark and the specimens in an application or registration file are not automatically evidence on behalf of the applicant or registrant. Deleted references in paragraph 2 to “documents, exhibits, etc.” as not forming evidence; clarified “evidence” by deleting “properly adduced” therefrom; and deleted the following from paragraph 2: “Allegations must be established by competent evidence properly adduced at trial.”
	Added new paragraph 3 to advise reader that evidence submitted during the prosecution of an application with respect to acquired distinctiveness is evidence on behalf of the applicant or registrant.
	Added new cases to Note 1: <i>The Cold War Museum, Inc. v. Cold War Air Museum, Inc.</i> , 586 F.3d 1352, 92 USPQ2d 1626 (Fed. Cir. 2009); <i>Venture Out Properties LLC v. Wynn Resorts Holdings LLC</i> , 81 USPQ2d 1887, 1889 n.8 (TTAB 2007); and <i>Jansen Enterprises, Inc. v. Rind</i> , 85 USPQ2d 1104, 1106 n.4 (TTAB 2007).
	Added new Note 2, citing: <i>Anthony's Pizza & Pasta International Inc. v. Anthony's Pizza Holding Co.</i> , 95 USPQ2d 1271, 1274 n.6 (TTAB 2009), <i>aff'd</i> , No. 2010-1191, slip op. (Fed. Cir. Nov. 18, 2010); <i>Hiraga v. Arena</i> , 90 USPQ2d 1102, 1105 (TTAB 2009); <i>Jansen Enterprises, Inc. v. Rind</i> , 85 USPQ2d 1104, 1106 n.4 (TTAB 2007); and <i>Venture Out Properties LLC v. Wynn Resorts Holdings LLC</i> , 81 USPQ2d 1887, 1889 n.8 (TTAB 2007).
	Added new cases to Note 3: <i>UMG Recordings, Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1047 (TTAB 2009); <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1960 (TTAB 2008); <i>Baseball America, Inc. v. Powerplay Sports, Ltd.</i> , 71 USPQ2d 1844, 1848 n.10 (TTAB 2004); and <i>Levi Strauss & Co. v. R. Josephs Sportswear Inc.</i> , 28 USPQ2d 1464, 1467 (TTAB 1993), <i>recon. denied</i> ,

	36 USPQ2d 1328 (TTAB 1994). Deleted the following from Note 3: “ <i>Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.</i> , 748 F.2d 9, 223 USPQ 1281 at 1283 (Fed. Cir. 1984) (evidence in application file considered by court, but little weight given to applicant’s statements before examining attorney)” and “ <i>Kellogg Co. v. Pack’Em Enterprises Inc.</i> , 14 USPQ2d 1545, 1549 (TTAB 1990) (search report), <i>aff’d</i> , 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).”
	Added new Note 4, citing: <i>The Cold War Museum, Inc. v. Cold War Air Museum, Inc.</i> , 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009).
704.03(b) Not Subject of Proceeding – In General	No changes made.
704.03(b)(1) Registration Not Subject of Proceeding	Subsection Heading only.
704.03(b)(1)(A) Registration Owned by Party	Amended reference to 37 CFR § 2.122(d) to conform to rule changes.
	Amended paragraph 2 to conform to revision of 37 CFR § 2.122(d) allowing submission of single original or photocopy of registration from TARR or TESS database; notes that Board does not take judicial notice of registrations.
	Added new paragraph 3 regarding pleading of applications that mature into registrations during the proceeding and two new footnotes
	Amended paragraph 5 to conform to revision of 37 CFR § 2.122(d) allowing submission of single original or photocopy of registration from TARR or TESS database.
	Amended paragraph 6 by adding clause clarifying that paragraph concerns the situation when a party chooses to make its registration of record by submitting a status and title copy of registration.
	Deleted the following statement in paragraph 7 regarding insufficiency of electronic records: “and the electronic equivalent thereof, such as printouts of the registration from the electronic records of the Office’s trademark automated search system.”
	Moved paragraph 8 into Note 3.
	Deleted the following from paragraph 9: “The fact that there have been no changes in the status and title of a party’s registration since the date of its issuance does not mean that a plain photocopy

	thereof may be used by the party as a substitute for the status and title copy.”
	Added new paragraph 11 regarding using TARR or TESS copies of registrations as an alternative to submitting status and title copies of registrations.
	Amended paragraph 13 to clarify that admission must concern existence and ownership of registration.
	Amended paragraph 22 to clarify that registration file or portion of registration file may be taken from the Office’s electronic records.
	Added new cases to Note 2: <i>Citigroup Inc. v. Capital City Bank Group Inc.</i> , 94 USPQ2d 1645, 1654 (TTAB 2010); and <i>Research In Motion Ltd. v. NBOR Corp.</i> , 92 USPQ2d 1926, 1928 (TTAB 2009).
	Deleted the following cases from Note 2: <i>Vita-Pakt Citrus Products Co. v. Cerro</i> , 195 USPQ 78 (TTAB 1977); <i>Maybelline Co. v. Matney</i> , 194 USPQ 438, 440 (TTAB 1977); <i>Marriott Corp. v. Pappy's Enterprises, Inc.</i> , 192 USPQ 735 (TTAB 1976); <i>American Manufacturing Co., v. Phase Industries, Inc.</i> , 192 USPQ 498 (TTAB 1976); <i>West Point-Pepperell, Inc. v. Borlan Industries Inc.</i> , 191 USPQ 53 (TTAB 1976); <i>O. M. Scott & Sons Co. v. Ferry-Morse Seed Co.</i> , 190 USPQ 352 (TTAB 1976); <i>Fort Howard Paper Co. v. Georgia-Pacific Corp.</i> , 189 USPQ 537 (TTAB 1975); <i>Peters Sportswear Co. v. Peter's Bag Corp.</i> , 187 USPQ 647, 647 (TTAB 1975); and <i>A.R.A. Manufacturing Co. v. Equipment Co.</i> , 183 USPQ 558 (TTAB 1974). <i>Cf. Hollister Inc. v. Downey</i> , 565 F.2d 1208, 196 USPQ 118 (CCPA 1977).”
	Added new Note 3, citing: <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1046 (TTAB 2009), citing <i>Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.</i> , 2 USPQ2d 1682, 1683-84, n.3 (TTAB 1987); and <i>Black & Decker Corp. v. Emerson Electric Co.</i> , 84 USPQ2d 1482, 1485 n.4 (TTAB 2007) and discussing in <i>In re Chippendales USA, Inc.</i> , Appeal No. 2009-1370 (Fed. Cir. October 1, 2010).
	Added new Note 4, citing: <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1045 n.12 (TTAB 2009); <i>Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha</i> , 77 USPQ2d 1917, 1920 (TTAB

	2006); <i>DC Comics v. Pan American Grain Mfg. Co.</i> , 77 USPQ2d 1220, 1223 n.6 (TTAB 2005); and <i>M & T Chemicals Inc. v. Stepan Chemical Co.</i> , 150 USPQ 570, 571 (TTAB 1966).
	Added new Note 5, citing: <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1045 (TTAB 2009).
	Deleted the following from Note 7: "Exam Guide No. 2-03, Guide to Implementation of Madrid Protocol in the United States, (part IV.F.) (October 28, 2003) on the Office web site at www.uspto.gov ."
	Added new cases to Note 8: <i>Citigroup Inc. v. Capital City Bank Group Inc.</i> , 94 USPQ2d 1645, 1654 (TTAB 2010); <i>Research In Motion Ltd. v. NBOR Corp.</i> , 92 USPQ2d 1926, 1928 (TTAB 2009); and <i>UMG Recordings, Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1045 (TTAB 2009). Deleted the following from Note 8: "In addition, see note to this section for information on recording assignments of 66(a) registrations."
	Added new case and new references to Note 11: <i>Industrial Adhesive Co. v. Borden, Inc.</i> , 218 USPQ 945, 947 (TTAB 1983); 37 CFR § 2.122(e); and 37 CFR § 2.6(b)(4).
	Added new cases to Note 14: <i>Research In Motion Ltd. v. NBOR Corp.</i> , 92 USPQ2d 1926, 1928 (TTAB 2009); and, by example, <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1116-17 (TTAB 2009).
	Deleted the following footnote from between Notes 14 and 15: "138. See <i>Industrial Adhesive Co. v. Borden, Inc.</i> , 218 USPQ 945, 947 (TTAB 1983) (copies do not have to be certified but must contain status and title information)."
	Added new parenthetical to <i>Royal Hawaiian Perfumes, Ltd. v. Diamond Head Products of Hawaii, Inc.</i> , 204 USPQ 144, 146 (TTAB 1979) in Note 15.
	Deleted the following footnote from between Notes 15 and 16: "140. See <i>Industrial Adhesive Co. v. Borden, Inc.</i> , 218 USPQ 945, 949 (TTAB 1983) (it is not sufficient that status and title copies might have shown the same facts indicated by a photocopy of an original registration which had recently issued or even if time for filing Sections 8 and 15 affidavits had not yet occurred since

	ownership could have changed or other events affecting ownership may have occurred); <i>Acme Boot Co. v. Tony and Susan Alamo Foundation Inc.</i> , 213 USPQ 591, 592 (TTAB 1980); <i>Maybelline Co. v. Matney</i> , 194 USPQ 438 (TTAB 1977); and <i>Marriott Corp. v. Pappy's Enterprises, Inc.</i> , 192 USPQ 735, 736 (TTAB 1976)."
	Deleted the following from Note 16: "See also NOTE to this section for information on recording assignments of 66(a) registrations."
	Added new cases to Note 17: <i>Nike Inc. v. WNBA Enterprises LLC</i> , 85 USPQ2d 1187, 1192 n.9 (TTAB 2007); <i>Black & Decker Corp. v. Emerson Electric Co.</i> , 84 USPQ2d 1482, 1487-88 n.10-12 (TTAB 2007); <i>Parfums de Coeur, Ltd. v. Lazarus</i> , 83 USPQ2d 1012, 1014 n.4 (TTAB 2007); and <i>Tea Board of India v. Republic of Tea, Inc.</i> , 80 USPQ2d 1881, 1896 n.25 (TTAB 2006).
	Added new case to Note 18: <i>Citigroup Inc. v. Capital City Bank Group Inc.</i> , 94 USPQ2d 1645, 1654 (TTAB 2010); and added "see" signal before citation to <i>Hewlett-Packard Co. v. Olympus Corp.</i> , 931 F.2d 1551, 18 USPQ2d 1710, 1713 (Fed. Cir. 1991) in Note 18.
	Added new cases, by comparison, to Note 19: <i>UMG Recordings Inc. v. O'Rourke</i> , 92 USPQ2d 1042, 1045 (TTAB 2009); and <i>Demon International LC v. Lynch</i> , 86 USPQ2d 1058, 1060 (TTAB 2008).
	Added Federal Reporter citation to <i>Action Temporary Services Inc. v. Labor Force Inc.</i> , 870 F.2d 1563, 10 USPQ2d 1307 (Fed. Cir. 1989) in Note 24.
704.03(b)(1)(B) Third-Party Registration	Amended paragraph 2 to indicate that a printout of a registration from the Office's electronic database records may be made of record under notice of reliance.
	Amended paragraph 5 to inform reader that printout showing current status and title copy is acceptable alternative to same prepared by Office.
	Amended paragraph 10 to inform reader of the option of obtaining records from the Office's electronic database records.
	Added new Note 1, citing: <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100, 1110 (TTAB 2007).

	Deleted the following from Note 2: “J. David Sams, <i>TIPS FROM THE TTAB: Third Party Registrations in TTAB Proceedings</i> , 72 Trademark Rep. 297, 301 (1982).”
	Deleted the following from Note 3: “J. David Sams, <i>TIPS FROM THE TTAB: Third Party Registrations in TTAB Proceedings</i> , 72 Trademark Reporter 297 (1982); and Janet E. Rice, <i>TIPS FROM THE TTAB: Making Documents Obtained During Discovery and Third-Party Registrations of Record</i> , 67 Trademark Rep. 54 (1977).”
	Amended parenthetical to <i>In re H & H Products</i> , 228 USPQ 771, 773 (TTAB 1986) in Note 4.
	Added new case to Note 5: <i>Merritt Foods Company v. Americana Submarine</i> , 209 USPQ 591, 593 n.16 (TTAB 1980); and deleted the following from Note 5: “Janet E. Rice, <i>TIPS FROM THE TTAB: Making Documents Obtained During Discovery and Third-Party Registrations of Record</i> , 67 Trademark Rep. 54 (1977).”
	Added new cases to Note 6: <i>Jansen Enterprises, Inc. v. Rind</i> , 85 USPQ2d 1104, 1110 (TTAB 2007); and <i>Truescents, LLC v. Ride Skin Care, LLC</i> , 81 USPQ2d 1334, 1337 (TTAB 2006); and <i>In re Chippendales USA, Inc.</i> , Appeal No. 2009-1370 (Fed. Cir. October 1, 2010); deleted the following from Note 6: “Janet E. Rice, <i>TIPS FROM THE TTAB: Making Documents Obtained During Discovery and Third-Party Registrations of Record</i> , 67 Trademark Rep. 54 (1977).”
	Added new case to Note 7: <i>Nike, Inc. v. WNBA Enterprises, LLC</i> , 85 USPQ2d 1187, 1200 (TTAB 2007); and deleted the following from Note 7: “See also in addition J. David Sams, <i>TIPS FROM THE TTAB: Third Party Registrations in TTAB Proceedings</i> , 72 Trademark Rep. 297, 301 (1982).”
704.03(b)(2) Application Not Subject of Proceeding	Amended first paragraph to inform reader that copy of application can be obtained from the Office’s electronic records.
704.04 Statements and Things in Application or Registration	Amended first paragraph to indicate that file of involved application or registration is, rather than “may be,” of record; and deleted reference to TBMP § 704.03(b) in first paragraph.
	Amended second paragraph to indicate that allegation of date of use of a mark and specimen in application are not evidence, replacing “documents

	<p>and other things filed.” Further noted that date of use must be established at trial and that specimen must be introduced to be considered evidence. Deleted the following from second paragraph: “This is because the adverse party has a right to confront and cross-examine the person making the allegations, and to question the authenticity of the specimens, documents, exhibits, etc. Thus, for example, the allegation in an application or registration of a date of use is not evidence on behalf of the applicant or registrant in an inter partes proceeding; to be relied on by the applicant or registrant, a claimed date of use of a mark must be established by competent evidence. [Note 173.]”</p>
	<p>Deleted the following from paragraph 3: “The specimens in the file of an application or registration are not evidence on behalf of the applicant or registrant, in an inter partes proceeding, unless they are identified and introduced in evidence as exhibits during the testimony period. [Note 175.] Affidavits or declarations in an application or registration file cannot be relied on by the applicant or registrant, in an inter partes proceeding, as evidence of the truth of the statements contained therein; the statements must be established by competent evidence at trial. [Note 176.] Similarly, statements made by counsel, and exhibits filed, in an application or registration do not constitute admissible evidence in the applicant's or registrant's behalf in an inter partes proceeding; the statements must be established by competent evidence, and the exhibits must be properly identified and introduced in evidence, at trial. [Note 177.] Further, the fact that the file of an application or registration that is the subject of a Board inter partes proceeding is automatically of record in that proceeding, does not mean that a registration claimed by applicant or registrant in the application or registration is also automatically of record. [Note 178.]”</p>
	<p>Updated paragraph 4 from: “Although the allegations made and documents and things filed in an application or registration are not evidence, in a Board inter partes proceeding, on <i>behalf</i> of the</p>

	applicant or registrant (unless they are properly proved at trial), they may be used as evidence <i>against</i> the applicant or registrant, that is, as admissions against interest and the like.”
	Added new Note 1, citing: <i>The Cold War Museum, Inc. v. Cold War Air Museum, Inc.</i> , 586 F.3d 1352, 92 USPQ2d 1626, 1628 (Fed. Cir. 2009).
	Added new cases to Note 2: <i>UMG Recordings, Inc. v. Charles O’Rourke</i> , 92 USPQ2d 1042, 1047 (TTAB 2009); and <i>The Cold War Museum, Inc. v. Cold War Air Museum, Inc.</i> , 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009).
	Added new Note 3, citing: <i>Baseball America, Inc. v. Powerplay Sports, Ltd.</i> , 71 USPQ2d 1844, 1848, n.10 (TTAB 2004); <i>Levi Strauss & Co. v. R. Josephs Sportswear Inc.</i> , 28 USPQ2d 1464, 1467 (TTAB 1993); <i>Omega SA v. Compucorp</i> , 229 USPQ 191, 193 n.10 (TTAB 1985); <i>Osage Oil & Transportation, Inc. v. Standard Oil Co.</i> , 226 USPQ 905, 906 n.4 (TTAB 1985); and <i>Textron Inc. v. Arctic Enterprises, Inc.</i> , 178 USPQ 315 (TTAB 1973).
	Deleted the following cases from Note 4: “ <i>British Seagull Ltd. v. Brunswick Corp.</i> , 28 USPQ2d 1197, 1200 (TTAB 1993) (exhibits, affidavits and market survey which had been submitted by applicant in connection with the prosecution of its application are not evidence in subsequent opposition proceeding to establish acquired distinctiveness unless properly introduced), <i>aff’d</i> , 35 F.3d 1527, 32 USPQ2d 1120 (Fed. Cir. 1994); <i>Kellogg Co. v. Pack’Em Enterprises Inc.</i> , 14 USPQ2d 1545, 1547 n.6 (TTAB 1990) (reliance in brief on unproven statements in application), <i>aff’d</i> , 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991); <i>McDonald’s Corp. v. McKinley</i> , 13 USPQ2d 1895, 1897 n.4 (TTAB 1989) (notice of reliance referring to declaration signed by applicant in applying for registration); <i>Edison Brothers Stores, Inc. v. Brutting E.B. Sport-International GmbH</i> , 230 USPQ 530, 531 n.7 (TTAB 1986) (claim of ownership of registration in application does not make registration of record); <i>Osage Oil & Transportation, Inc. v. Standard Oil Co.</i> , 226 USPQ 905, 906 n.4 (TTAB 1985) (statements and materials in registration file bearing on respondent’s dates of use not evidence

	on behalf of respondent unless properly introduced); <i>Sunbeam Corp. v. Battle Creek Equipment Co.</i> , 216 USPQ 1101, 1102 n.3 (TTAB 1982) (applicant's claim of distinctiveness in its application is an admission by applicant that term is descriptive but 2(f) affidavit in application not admissible evidence of the truth of statements therein in inter partes proceeding).”
	Deleted the following cases from Note 4: “ <i>Copperweld Corp. v. Arcair Co.</i> , 200 USPQ 470, 474 n.3 (TTAB 1978) (claim of ownership of registration in application does not make registration of record).”
	Deleted the following cases from Note 4: “ <i>Textron Inc. v. Arctic Enterprises, Inc.</i> , 178 USPQ 315, 316 n.2 (TTAB 1973) (applicant cannot rely on dates of use alleged in application); <i>ILC Products Co. v. ILC, Inc.</i> , 175 USPQ 722, 723 n.3 (TTAB 1972); and <i>Fuld Brothers, Inc. v. Carpet Technical Service Institute, Inc.</i> , 174 USPQ 473, 476 (TTAB 1972) (self-serving statements made during prosecution of application are not admissible in cancellation proceeding). See also <i>W. T. Grant Co. v. Grant Avenue Fashions, Inc.</i> , 135 USPQ 273 (TTAB 1962).”
	Deleted the following footnote between Note 4 and Note 5: “172. See <i>ILC Products Co. v. ILC, Inc.</i> , 175 USPQ 722 (TTAB 1972); and <i>Fuld Brothers, Inc. v. Carpet Technical Service Institute, Inc.</i> , 174 USPQ 473 (TTAB 1972). See also <i>W. T. Grant Co. v. Grant Avenue Fashions, Inc.</i> , 135 USPQ 273 (TTAB 1962).”
	Deleted the following footnote from between Note 4 and Note 5: “173. 37 CFR § 2.122(b)(2). See <i>Levi Strauss & Co. v. R. Josephs Sportswear Inc.</i> , 28 USPQ2d 1464, 1467 (TTAB 1993); <i>Omega SA v. Compucorp</i> , 229 USPQ 191, 193 n.10 (TTAB 1985) (applicant may rely on presumption that its mark was in use as of filing date of application in absence of any proof of earlier use); <i>Osage Oil & Transportation, Inc. v. Standard Oil Co.</i> , 226 USPQ 905, 906 n.4 (TTAB 1985); and <i>Textron Inc. v. Arctic Enterprises, Inc.</i> , 178 USPQ 315 (TTAB 1973).”
	Deleted the following footnote from between Note 5 and Note 6: “175. 37 CFR § 2.122(b)(2). See

	<i>Mason Engineering & Design Corp. v. Mateson Chemical Corp.</i> , 225 USPQ 956, 961 n.11 (TTAB 1985); and <i>Eikonix Corp. v. CGR Medical Corp.</i> , 209 USPQ 607, 613 n.7 (TTAB 1981). See also, <i>Dap, Inc. v. Century Industries Corp.</i> , 183 USPQ 122 (TTAB 1974)."
	Deleted the following footnote between Note 5 and Note 6: "176. See <i>British Seagull Ltd. v. Brunswick Corp.</i> , 28 USPQ2d 1197, 1200 (TTAB 1993) (2(f) affidavits submitted during prosecution of application), <i>aff'd</i> , 35 F.3d 1527, 32 USPQ2d 1120 (Fed. Cir. 1994); <i>McDonald's Corp. v. McKinley</i> , 13 USPQ2d 1895, 1897 n.4 (TTAB 1989) (declaration in support of application), and <i>Sunbeam Corp. v. Battle Creek Equipment Co.</i> , 216 USPQ 1101, 1102 n.3 (TTAB 1982) (2(f) affidavit in application)."
	Deleted the following footnote between Note 5 and Note 6: "177. See <i>British Seagull Ltd. v. Brunswick Corp.</i> , 28 USPQ2d 1197, 1200 (TTAB 1993) (exhibits and market surveys to show acquired distinctiveness during prosecution were not competent evidence in subsequent opposition proceeding), <i>aff'd</i> , 35 F.3d 1527, 32 USPQ2d 1120 (Fed. Cir. 1994); <i>W. T. Grant Co. v. Grant Avenue Fashions, Inc.</i> , 135 USPQ 273, 275 (TTAB 1962) (explanation of applicant's operations by applicant's counsel during ex parte prosecution was not admissible evidence in subsequent opposition)."
	Deleted the following footnote between Note 5 and Note 6: "178. See <i>Curtice-Burns, Inc. v. Northwest Sanitation Products, Inc.</i> , 185 USPQ 61, <i>recon. denied</i> , 185 USPQ 176 (TTAB 1975), <i>aff'd</i> , 530 F.2d 1396, 189 USPQ 138, 140 (CCPA 1976); <i>Edison Brothers Stores, Inc. v. Brutting E.B. Sport-International GmbH</i> , 230 USPQ 530, 531 n. 7 (TTAB 1986); <i>Allied Mills, Inc. v. Kal Kan Foods, Inc.</i> , 203 USPQ 390, 396 n.10 (TTAB 1979); and <i>Copperweld Corp. v. Arcair Co.</i> , 200 USPQ 470, 474 n.3 (TTAB 1978)."
	Added new case to Note 5: <i>Bass Pro Trademarks, LLC v. Sportsman's Warehouse, Inc.</i> , 89 USPQ2d 1844, 1851 (TTAB 2008). Deleted the following from parenthetical to <i>Sunbeam Corp. v. Battle Creek Equipment Co.</i> , 216 USPQ 1101, 1102 n.3

	(TTAB 1982) in Note 6: “but 2(f) affidavit in application not admissible evidence of the truth of statements therein in inter partes proceeding.”
704.05 Exhibits to Pleadings or Briefs	Subsection Heading only.
704.05(a) Exhibits to Pleadings	Amended recitation of 37 CFR § 2.122(d) to reflect rule change.
	Changed “one exception” to “two exceptions” in first paragraph.
	In second paragraph, changed “one exception” to “first exception;” clarified meaning of “such” in second sentence; indicated that under first exception, Office must issue the status and title copy.
	Added new third paragraph regarding second exception of filing printouts as allowed by change in 37 CFR § 2.122(d); added reference to TBMP § 704.03(b)(1)(A).
	Added new Note 3, citing: <i>Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG</i> , 87 USPQ2d 1526, 1530 n.4 (TTAB 2008).
	Deleted reference to TBMP § 317 in view of rule change.
	Deleted reference to TBMP § 704.03(b)(1)(A).
704.05(b) Exhibits to Briefs	Added new second paragraph to advise reader not to file evidence with party’s brief.
	Added new cases to Note 1: <i>Syngenta Crop Protection, Inc. v. Bio-Chek, LLC</i> , 90 USPQ2d 1112, 1116 (TTAB 2009); <i>Bass Pro Trademarks LLC v. Sportsman Warehouse, Inc.</i> , 89 USPQ2d 1844, 1848 (TTAB 2008); <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1955 (TTAB 2008); <i>Starbucks U.S. Brands LLC v. Ruben</i> , 78 USPQ2d 1741, 1748 (TTAB 2006).
	Added new Note 2, citing: <i>Syngenta Crop Protection, Inc. v. Bio-Chek, LLC</i> , 90 USPQ 2d 1112, 1116 (TTAB 2009); and <i>Life Zone, Inc. v. Middleman Group, Inc.</i> , 87 USPQ2d 1953, 1955 n.4 (TTAB 2008).
704.06 Statements in Pleadings or Briefs	Subsection Heading only.
704.06(a) Statements in Pleadings	Added new case to Notes 1 and 2: <i>Saul Zaentz Co. v. Bumb</i> , 95 USPQ2d 1723, 1725 n.7 (TTAB 2010).
	Amended parenthetical to <i>Kellogg Co. v. Pack'Em Enterprises Inc.</i> , 14 USPQ2d 1545, 1548 n.6

	(TTAB 1990) in Note 2.
704.06(b) Statements in Briefs	Added new cases to Note 1: <i>Saul Zaentz Co. v. Bumb</i> , 95 USPQ2d 1723, 1725 n.7 (TTAB 2010); <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581, 1587 (TTAB 2008); <i>Jansen Enterprises, Inc. v. Rind</i> , 85 USPQ2d 1104, 1110 (TTAB 2007); <i>Schering-Plough HealthCare Products, Inc. v. Ing-Jing Huang</i> , 84 USPQ2d 1323, 1328 (TTAB 2007); <i>DC Comics v. Pan American Grain Mfg. Co.</i> , 77 USPQ2d 1220, 1224 n.5 (TTAB 2005); and <i>Baseball America, Inc. v. Powerplay Sports, Ltd.</i> , 71 USPQ2d 1847, 1847 (TTAB 2004).
704.07 Official Records	Added new case to Note 1: <i>Standard Knitting, Ltd. v. Toyota Jidosha Kabushiki Kaisha</i> , 77 USPQ2d 1917, 1920 (TTAB 2006).
	Updated <i>Black's Law Dictionary</i> citation from "Fifth Edition, 1979" to "Sixth Edition, 1990)" in Note 2.
	Added new cases to Note 2: <i>Research In Motion Ltd. v. NBOR Corp.</i> , 92 USPQ2d 1926, 1929 (TTAB 2009); <i>Hiraga v. Arena</i> , 90 USPQ2d 1102, 1105 (TTAB 2009); and <i>7-Eleven, Inc. v. Wechsler</i> , 83 USPQ2d 1715, 1717 n.3 (TTAB 2007).
	Added new cases to Note 4: <i>Coach Services Inc. v. Triumph Learning LLC</i> , 96 USPQ2d 1600 (TTAB 2010); <i>Brooks v. Creative Arts By Calloway LLC</i> , 93 USPQ2d 1823, 1826 (TTAB 2010); <i>Research In Motion Ltd. v. NBOR Corp.</i> , 92 USPQ2d 1926, 1929 (TTAB 2009); <i>UMG Recordings, Inc. v. Charles O'Rourke</i> , 92 USPQ2d 1042, 1045 (TTAB 2009); <i>Syngenta Crop Protection, Inc. v. Bio-Chek, LLC</i> , 90 USPQ2d 1112, 1118 (TTAB 2009); <i>Hiraga v. Arena</i> , 90 USPQ2d 1102, 1105 (TTAB 2009); <i>Black & Decker Corp. v. Emerson Electric Co.</i> , 84 USPQ2d 1482, 1485 (TTAB 2007); <i>Wet Seal, Inc. v. FD Management, Inc.</i> , 82 USPQ2d 1629, 1632 (TTAB 2007).
704.08 Printed Publications	Section heading only. This section has now been divided into three new subsections, one dealing with traditional printed publications (704.08(a)), one dealing with Internet materials (704.08(b)), and the third with other printed materials (704.08(c)).
704.08(a) Traditional Printed Publications	This is a new subsection addressing how to make traditional printed publications (i.e. books) of record by notice of reliance.
	Amended third paragraph to inform reader that

	party offering publications under notice of reliance need make showing of admissibility only upon challenge.
	Added new cases to Note 2: <i>Panda Travel Inc. v. Resort Option Enterprises Inc.</i> , 94 USPQ2d 1789, 1793 (TTAB 2009); <i>Paris Glove of Canada Ltd. v. SBC/Sporto Corp.</i> , 84 USPQ2d 1856, 1857 (TTAB 2007); <i>Blue Man Productions Inc. v. Tarmann</i> , 75 USPQ2d 1811, 1813 (TTAB 2005), <i>rev'd on other grounds</i> , No. 05-2037, slip op. (D.D.C. Apr. 3, 2008).
	Deleted reference to TBMP § 707 in Note 3.
	Added new cases to Note 5: <i>Research In Motion Ltd. v. NBOR Corp.</i> , 92 USPQ2d 1926, 1929 (TTAB 2009); <i>Stuart Spector Designs, Ltd. v. Fender Musical Instruments Corp.</i> , 94 USPQ2d 1549 (TTAB 2009); <i>Hiraga v. Arena</i> , 90 USPQ2d 1102, 1104 (TTAB 2009); <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1956-59 (TTAB 2008); <i>L.C. Licensing Inc. v. Berman</i> , 86 USPQ2d 1883, 1886, n.6 (TTAB 2008); <i>Tri-Star Marketing LLC v. Nino Franco Spumanti S.R.L.</i> , 84 USPQ2d 1912, 1914 (TTAB 2007); <i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629, 1632 (TTAB 2007); <i>Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.</i> , 77 USPQ2d 1492, 1500 (TTAB 2005).
	Added new cases to Note 6: <i>Brooks v. Creative Arts By Calloway LLC</i> , 93 USPQ2d 1823, 1827 (TTAB 2010); <i>Safer Inc. v. OMS Investments Inc.</i> , 94 USPQ2d 1031, 1037 n.14 (TTAB 2010); <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1117 n.7 (TTAB 2009); <i>7-Eleven Inc. v. Wechsler</i> , 83 USPQ2d 1715, 1717 n.2 (TTAB 2007); <i>L.C. Licensing Inc. v. Berman</i> , 86 USPQ2d 1883, 1887 (TTAB 2008).
	Added new cases to Note 9: <i>L.C. Licensing Inc. v. Berman</i> , 86 USPQ2d 1883, 1886 n.6 (TTAB 2008); and <i>Black & Decker Corp. v. Emerson Electric Co.</i> , 84 USPQ2d 1482, 1485 (TTAB 2007).
	Changed parenthetical to <i>Hunter Publishing Co. v. Caulfield Publishing Ltd.</i> , 1 USPQ2d 1996, 1997 n.2 (TTAB 1986) in Note 9 from "improper subject matter and improper rebuttal considered" to "matter improper for notice of reliance and for rebuttal considered."

	Changed parenthetical to <i>Jeanne-Marc, Inc. v. Cluett, Peabody & Co.</i> , 221 USPQ 58 (TTAB 1984) in Note 9 from “annual reports improper subject matter considered” to “annual reports and responses to document production request considered.”
704.08(b) Internet Materials	This is a new subsection explaining the Board’s current policy regarding submission of evidence obtained from the Internet, citing <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031 (TTAB 2010).
	Deleted subheading “Internet evidence and other materials that are not self authenticating.”
	Amended to inform reader that Board considers Internet documents that display date and source to be presumptively true and genuine. Deleted the following from paragraph 1: “The element of self-authentication cannot be presumed to be capable of being satisfied by information obtained and printed out from the Internet. [Note 207.] Internet postings are transitory in nature as they may be modified or deleted at any time without notice and thus are not ‘subject to the safeguard that the party against whom the evidence is offered is readily able to corroborate or refute the authenticity of what is proffered.’ [Note 208.] For this reason, Internet printouts cannot be considered the equivalent of printouts from a NEXIS search where printouts are the electronic equivalents of the printed publications and permanent sources for the publications are identified. [Note 209.]”
	Added new Note 1, citing: <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031 (TTAB 2010) and <i>Coach Services Inc. v. Triumph Learning LLC</i> , 96 USPQ2d 1600 (TTAB 2010).
	Added new Note 2, citing: <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031 (TTAB 2010).
704.08(c) Other Printed Materials	This is a new subsection which previously fell under the subheading “other materials that are not self-authenticating.”
	Added new case to Note 1: <i>Paris Glove of Canada Ltd. v. SBC/Sporto Corp.</i> , 84 USPQ2d 1856, 1857 (TTAB 2007).
	Added new Note 3, citing: <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031, 1039 (TTAB 2010).

	Deleted the following footnote from between Note 2 and new Note 3: “207. <i>See Raccioppi v. Apogee Inc.</i> , 47 USPQ2d 1368, 1370 (TTAB 1998). <i>See also In re Total Quality Group Inc.</i> , 51 USPQ2d 1474, 1476 (TTAB 1999).”
	Deleted the following footnote from between Note 2 and new Note 3: “208. <i>Weyerhaeuser v. Katz</i> , 24 USPQ2d 1230, 1232 (TTAB 1992) citing <i>Glamorene Products Corporation v. Earl Grissmer Company, Inc.</i> , 203 USPQ 1090, 1092 n.5 (TTAB 1979). <i>See also Raccioppi v. Apogee Inc.</i> , 47 USPQ2d 1368, 1370 (TTAB 1998); <i>Michael S. Sachs Inc. v. Cordon Art B.V.</i> , 56 USPQ2d 1132, 1134 (TTAB 2000) (introduction of telephone listings retrieved from Internet was improper); and <i>Plyboo America Inc. v. Smith & Fong Co.</i> , 51 USPQ2d 1633, 1634 n.3 (TTAB 1999) (printout of page of website is not proper subject matter for a notice of reliance).”
	Deleted the following footnote from between Note 2 and new Note 3: “209. <i>See Raccioppi v. Apogee Inc.</i> , 47 USPQ2d 1368, 1370 (TTAB 1998). <i>See also In re Total Quality Group Inc.</i> , 51 USPQ2d 1474, 1476 (TTAB 1999) (examining attorney’s request for judicial notice of on-line dictionary definitions denied because the definitions were not available in printed format). <i>Cf. In re CyberFinancial.Net Inc.</i> , 65 USPQ2d 1789, 1791 n.3 (TTAB 2002) (judicial notice taken of online dictionary definition where resource was also available in book form).”
	Added new case to Note 4: <i>Starbucks U.S. Brands LLC v. Ruben</i> , 78 USPQ2d 1741, 1748 (TTAB 2006); and deleted the following from Note 15: “ <i>Raccioppi v. Apogee Inc.</i> , 47 USPQ2d 1368, 1371 (TTAB 1998) with respect to introducing Internet evidence in connection with a summary judgment motion.”
	Added new cases to Note 5: <i>Stuart Spector Designs, Ltd. v. Fender Musical Instruments Corp.</i> , 94 USPQ2d 1549 (TTAB 2009); <i>Tea Board of India v. Republic of Tea Inc.</i> , 80 USPQ2d 1881, 1884 n.8 (TTAB 2006); <i>Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha</i> , 77 USPQ2d 1917, 1931 n.26 (TTAB 2006); and <i>Blue Man Productions Inc. v. Tarmann</i> , 75 USPQ2d 1811, 1813 (TTAB 2005),

	<i>rev'd on other grounds</i> , No. 05-2037, slip op. (D.D.C. Apr. 3, 2008).
	Deleted the following cases from Note 5: " <i>Raccioppi v. Apogee Inc.</i> , 47 USPQ2d 1368, 1371 (TTAB 1998) (the reliability of the information becomes a matter of weight or probative value to be given the Internet evidence). <i>See also In re Remacle</i> , 66 USPQ2d 1222, 1224 n.5 (TTAB 2002) (involving Internet articles from sources outside the United States)."
704.09 Discovery Depositions	Amended recitation of 37 CFR § 2.120(j) to reflect rule change.
	Amended paragraph 8 to advise reader that introduction of discovery deposition of witness not necessarily precluded by failure to identify witness in initial disclosures.
	Amended paragraph 9 to inform reader that written disclosures and disclosed documents should not be filed with the Board except under enumerated situations; and to delete the following: "The Board may return discovery papers or materials filed under other circumstances."
	Deleted the following case from Note 1: <i>Ethicon, Inc. v. American Cyanamid Co.</i> , 192 USPQ 647, 651 n.11 (TTAB 1976) (deposed party may not rely on statements made in discovery deposition if the deposition is not made of record).
	Added new case to Notes 3 and 5: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1862 (TTAB 2009). Deleted the following case from Note 3: <i>Marshall Field & Co. v. Mrs. Fields Cookies</i> , 25 USPQ2d 1321 (TTAB 1992).
	Added new Note 8, citing: <i>See Sports Authority Michigan Inc. v. PC Authority Inc.</i> , 63 USPQ2d 1782, 1787 (TTAB 2001)
	Added new case to Note 11: <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i> , 89 USPQ2d 1844, 1848 n.6 (TTAB 2008).
	Added new case to Note 12: <i>Galaxy Metal Gear Inc. v. Direct Access Technology Inc.</i> , 91 USPQ2d 1859, 1861 (TTAB 2009).
704.10 Interrogatory Answers; Admissions	Amended reference to 37 CFR § 2.120(j) to reflect rules changes.
	Amended paragraph 4 from: "Offering interrogatory answers, or admissions, on the

	record during the taking of a testimony deposition is the equivalent of serving and filing a notice of reliance by mail” to: “Interrogatory answers, or admissions, may be admitted into evidence through the testimony deposition of a witness as an alternative to the notice of reliance procedure.”
	Amended paragraph 8 to include materials obtained through the disclosure process in category of materials that should not be filed with Board except under specified conditions. Deleted the following from paragraph 8: “The Board may return discovery papers or materials filed under other circumstances.” Added statement to paragraph 8 to inform reader that not all documents produced in response to document production request may be submitted under notice of reliance.
	Amended paragraph 10 to include reference to TBMP § 407 for the information regarding effect of not responding to a request for admission.
	Added new case to Note 3: <i>Hiraga v. Arena</i> , 90 USPQ2d 1102, 1105 (TTAB 2009).
	Added new Note 4, citing, by comparison: <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1957 n.10 (TTAB 2008).
	Added new case to Note 5: <i>B.V.D. Licensing Corp. v. Rodriguez</i> , 83 USPQ2d 1500, 1503 (TTAB 2007).
	Added new case, by example, to Note 10: <i>Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.</i> , 89 USPQ2d 1844, 1848 n.6 (TTAB 2008). Added new case, by comparison, to Note 10: <i>Hiraga v. Arena</i> , 90 USPQ2d 1102, 1106 (TTAB 2009).
	Deleted reference to TBMP § 409.
704.11 Produced Documents	Amended 37 CFR § 2.120(j)(3)(ii) to reflect rules changes.
	Amended second paragraph to include documents obtained through disclosure in list of documents that may not be made of record by notice of reliance alone; and included “Internet documents” in list of produced documents that may be made of record by notice of reliance. Added references to TBMP §§ 704.07 and 704.08 in second paragraph.
	Amended third paragraph, including subparts (1)-(8), to include documents obtained through

	disclosure in list of methods by which such documents may be made of record. Clarified subpart (2) in third paragraph to address need to serve request for production of Fed. R. Civ. P. 34 documents early in discovery. Clarified subpart (5) to include “Internet materials” in list of produced documents that may be made of record by notice of reliance.
	Included “initial disclosures” in fourth paragraph, as subject for which further information may be found in TBMP §§ 401 and 406.
	Added new paragraph 5, noting that party may make of record its response that no responsive documents exist.
	Added new case to Note 1: <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100, 1103-1104 (TTAB 2007).
	Added new cases to Note 2: <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031, 1039 (TTAB 2010); <i>Giersch v. Scripps Networks Inc.</i> , 90 USPQ2d 1020, 1022 (TTAB 2009); and <i>L.C. Licensing Inc. v. Berman</i> , 86 USPQ2d 1883, 1886 n.5 (TTAB 2008).
	Deleted the following from Note 2: “Janet E. Rice, <i>TIPS FROM THE TTAB: Making Documents Obtained During Discovery and Third-Party Registrations of Record</i> , 67 Trademark Rep. 54 (1977).”
	Added new reference and case to Note 5: 37 CFR § 2.122(e); and <i>Safer, Inc. v. OMS Investments, Inc.</i> , 94 USPQ2d 1031, 1039 (TTAB 2010).
	Added new Note 6, citing: <i>Ballet Tech Foundation Inc. v. Joyce Theater Foundation Inc.</i> , 89 USPQ2d 1262, 1265 n.8 (TTAB 2008); and, by comparison, <i>Association pour la Defense et la Promotion de l'Oeuvre de Marc Chagall dite Comite Marc Chagall v. Bondarchuk</i> , 82 USPQ2d 1838, 1841 (TTAB 2007).
	Added new Note 8, citing: <i>L.C. Licensing Inc. v. Berman</i> , 86 USPQ2d 1883, n.5 (TTAB 2008).
704.12 Judicial Notice	No substantive changes.
704.12(a) Kind of Fact That May be Judicially Noticed	Added new reference to TBMP § 1208.04 in second paragraph.
	Added new cases to Note 2: <i>Enbridge Inc. v. Excelerate Energy LP</i> , 92 USPQ2d 1537, 1542 n.9 (TTAB 2009); <i>UMG Recordings, Inc. v. Charles</i>

	<p><i>O'Rourke</i>, 92 USPQ2d 1042, 1046 (TTAB 2009); <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i>, 90 USPQ2d 1112, 1117 (TTAB 2009); <i>Boston Red Sox Baseball Club LP v. Sherman</i>, 88 USPQ2d 1581, 1590 n.8 (TTAB 2008); <i>H.D. Lee Co. v. Maidenform Inc.</i>, 87 USPQ2d 1715, 1723 (TTAB 2008); <i>L.C. Licensing Inc. v. Berman</i>, 86 USPQ2d 1883, 1889 (TTAB 2008); <i>Jansen Enterprises Inc. v. Rind</i>, 85 USPQ2d 1104, 1110 (TTAB 2007); <i>Nike Inc. v. WNBA Enterprises LLC</i>, 85 USPQ2d 1187, 1192 n.9 (TTAB 2007); <i>Black & Decker Corp. v. Emerson Electric Co.</i>, 84 USPQ2d 1482, 1485 (TTAB 2007); <i>In re Red Bull GmbH</i>, 78 USPQ2d 1375, 1379 n.7 (TTAB 2006); <i>Motion Picture Association of America Inc. v. Respect Sportswear Inc.</i>, 83 USPQ2d 1555, 1558 (TTAB 2007); <i>Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha</i>, 77 USPQ2d 1917, 1931 n.26 (TTAB 2006); and <i>Omega SA v. Compucorp</i>, 229 USPQ 191 (TTAB 1985).</p>
	<p>Deleted the following from Note 2: <i>Quaker Oats Co. v. Acme Feed Mills, Inc.</i>, 192 USPQ 653 (TTAB 1976) (law of any jurisdiction, when a copy thereof is submitted under notice of reliance--yes).</p>
	<p>Added parenthetical to citation of <i>Boswell v. Mavety Media Group Ltd.</i>, 52 USPQ2d 1600, 1605 (TTAB 1999) in Note 2.</p>
704.12(b) When Taken	No changes made.
704.12(c) Opportunity to be Heard	No changes made.
704.12(d) Time of Taking Notice	No changes made.
704.13 Testimony From Another Proceeding	Corrected typographical error (extra word "have") in Note 1.
	<p>Changed "n.15" to "n.13" in parenthetical to <i>Philip Morris Inc. v. Brown & Williamson Tobacco Corp.</i>, 230 USPQ 172, 182 (TTAB 1986) in Note 2.</p>
704.14 Initial Disclosures and Disclosed Documents (new subsection)	<p>This is a new subsection, referencing 37 CFR § 2.120(j); and TBMP §§ 704.07 and 704.08 (in paragraph 2). This subsection addresses how to make written disclosures and disclosed documents of record in Board proceeding; and informs reader that same may be used during examination of witness but may not be filed with Board except under specified circumstances.</p>
	<p>Added new Note 1, referencing: 37 CFR</p>

	§ 2.120(j)(3)(i); and citing: <i>Syngenta Crop Protection, Inc. v. Bio-Chek, LLC</i> , 90 USPQ2d 1112, 1117 (TTAB 2005); and <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1956 (TTAB 2008).
	Added new Note 2, referencing: 37 CFR § 2.120(j)(3)(i).
	Added new Note 3, referencing: 37 CFR § 2.120(j)(3)(ii).
	Added new Note 4, citing: <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541, 1543 (TTAB 2008); and referencing: Notice of Final Rulemaking, Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (Aug. 1, 2007).
	Added new Note 5, referencing: 37 CFR § 2.120(j)(5).
	Added new Note 6, referencing: 37 CFR § 2.120(j)(6).
	Added new Note 7, referencing: 37 CFR § 2.120(j)(7).
	Added new Note 8, referencing 37 CFR § 2.120(j)(8); and citing: <i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i> , 88 USPQ2d 1541, 1542 n.3 (TTAB 2008).
705 Stipulated Evidence and Accelerated Case Resolution (ACR) (new title)	Updated Section Heading from “Stipulated Evidence”
	Amended first paragraph to indicate that parties may agree to stipulate to entire trial record; and that later objections may not be raised where party has failed to reserve right to object.
	Added new paragraph 3 to inform reader that ACR may be available; referencing TBMP §§ 528.05(a)(2) and 702.04.
	Added new Notes 1 and 2, citing: <i>Target Brands Inc. v. Hughes</i> , 85 USPQ2d 1676, 1678 (TTAB 2007).
	Deleted the following from between new Note 2 and new Note 3: “See Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 397-398 (1985).”

	Added new Note 3, citing: <i>Brooks v. Creative Arts By Calloway LLC</i> , 93 USPQ2d 1823, 1827 (TTAB 2009).
	Added new Note 5, citing: <i>Brooks v. Creative Arts By Calloway LLC</i> , 93 USPQ2d 1823, 1824 (TTAB 2009); <i>Eveready Battery Co., Inc. v. Green Planet, Inc.</i> , 91 USPQ2d 1511, 1513 (TTAB 2009); <i>Target Brands, Inc. v. Hughes</i> , 85 USPQ2d 1676 (TTAB 2007); <i>Ballet Tech Foundation Inc. v. Joyce Theater Foundation Inc.</i> , 89 USPQ2d 1262, 1265 n.8 (TTAB 2008); and <i>Micro Motion Inc. v. Danfoss A/S</i> , 49 USPQ2d 1628, 1629 n.2 (TTAB 1998).
706 Noncomplying Evidence	Added new cases to Note 1: <i>Baseball America Inc. v. Powerplay Sports Ltd.</i> , 71 USPQ2d 1844, 1846 n.8 (TTAB 2004); and <i>The Maytag Co. v. Luskis's, Inc.</i> , 228 USPQ 747, 748 (TTAB 1986). Deleted the following from Note 1: "Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 393 (1985)."
707 Objections to Evidence	Section Heading only.
707.01 In General	No substantive changes made.
707.02 Objections to Notices of Reliance	Subsection Heading only.
707.02(a) In General	No substantive changes made.
707.02(b) On Procedural Grounds	Amended first paragraph to inform reader that procedural objections that could be cured but which are not timely raised are deemed waived.
	Deleted the following from Note 3: " <i>Johnson & Johnson v. American Hospital Supply Corp.</i> , 187 USPQ 478, 479 (TTAB 1975) (Board, on reconsideration, reversed its decision to treat defendant's objection to notice of reliance as motion to strike since opposer did not file a brief in response to objections but instead intended to argue against the objections in its trial brief)."
707.02(b)(1) On Ground of Untimeliness	Added new case to Note 1: <i>Maids to Order of Ohio Inc. v. Maid-to-Order Inc.</i> , 78 USPQ2d 1899, 1902 (TTAB 2006).
707.02(b)(2) On Other Procedural Grounds	Added new case to Note 2: <i>Research In Motion Ltd. v. NBOR Corp.</i> , 92 USPQ2d 1926, 1928 (TTAB 2009).
707.02(c) On Substantive Grounds	Deleted the following from Note 2: "Louise E. Frugé, <i>TIPS FROM THE TTAB: An 'Object' Lesson</i> , 72 Trademark Rep. 211 (1982)."

707.03 Objections to Trial Testimony Depositions	Subsection Heading only.
707.03(a) In General	Amended statement that objection must be raised promptly or it is waived to indicate that statement is “deemed waived.”
	Added new Note 1, citing: <i>Carefirst of Maryland Inc. v. FirstHealth of the Carolinas, Inc.</i> , 77 USPQ2d 1492, 1495 (TTAB 2005).
707.03(b) On Procedural Grounds	Subsection Heading only.
707.03(b)(1) On Ground of Untimeliness	No substantive changes made.
707.03(b)(2) On Ground of Improper or Inadequate Notice	Amended recitation of 37 CFR § 2.123(e)(3) to reflect rules changes.
707.03(b)(3) On Ground of Failure to Disclose (new subsection)	This is a new subsection, referencing 37 CFR § 2.121(e) and 37 CFR § 2.123(e)(3); and addressing a party’s right to object to improper or inadequate pretrial disclosures.
	Added new Note 1, referencing 37 CFR § 2.123(e)(3); 37 CFR § 2.118; and Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007); and citing: <i>Jules Jurgensen/Rhapsody Inc. v. Baumberger</i> , 91 USPQ2d 1443, 1444 (TTAB 2009).
	Added new Note 2, referencing 37 CFR § 2.121(e); and citing: <i>Jules Jurgensen/Rhapsody Inc. v. Baumberger</i> , 91 USPQ2d 1443, 1444 (TTAB 2009).
707.03(c) On Other Procedural Grounds and on Substantive Grounds	Amended recitation of 37 CFR § 2.123(e) and Fed. R. Civ. P. 32(d) to reflect recent amendments to rules.
	Changed citation from TBMP § 707.03 to 707.03(a) in second paragraph.
	Added new subheading (4), regarding signatures to testimonial deposition transcripts.
	Amended third-to-last paragraph to advise reader to preserve objections raised at trial by including same as an appendix or statement filed with brief.
	Added new Note 1, citing: <i>Syngenta Crop Protection Inc. v. Bio-Chek LLC</i> , 90 USPQ2d 1112, 1116 (TTAB 2009).
	Added new case to Note 2: <i>Hornby v. TJX Companies, Inc.</i> , 87 USPQ2d 1411, 1417 (TTAB 2008).

	Added new case to Note 4: <i>Giersch v. Scripps Networks, Inc.</i> , 90 USPQ2d 1020, 1022 (TTAB 2009).
	Deleted the following from Note 5: “ <i>Beech Aircraft Corp. v. Lightning Aircraft Co., supra.</i> ”
	Deleted the following from Note 7: See Louise E. Frugé, <i>TIPS FROM THE TTAB: An ‘Object’ Lesson</i> , 72 Trademark Rep. 211 (1982).”
	Added new case, by example, to Note 8: <i>Krause v. Krause Publications Inc.</i> , 76 USPQ2d 1904, 1907 (TTAB 2005).
	Added new cases to Note 12: <i>Anthony’s Pizza & Pasta International, Inc. v. Anthony’s Pizza Holding Co., Inc.</i> , 95 USPQ2d 1271, 1273 n.4 (TTAB 2009), <i>aff’d</i> , No. 2010-1191, slip op. (Fed. Cir. Nov. 18, 2010); <i>7-Eleven, Inc. v. Wechsler</i> , 83 USPQ2d 1715, 1718 n.25 (TTAB 2007); <i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629, 1632 (TTAB 2007); <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100, 1104 (TTAB 2007); <i>Duramax Marine LLC v. R.W. Fernstrum & Co.</i> , 80 USPQ2d 1780, 1785 (TTAB 2006); <i>First Niagara Insurance Brokers Inc. v. First Niagara Financial Group Inc.</i> , 77 USPQ2d 1334, 1340 n.14 (TTAB 2005), <i>rev’d on other grounds</i> , 476 F.3d 867, 81 USPQ2d 1375 (Fed. Cir. 2007).
	Added new Note 13, citing: <i>Starbucks U.S. Brands LLC v. Ruben</i> , 78 USPQ2d 1741, 1747 (TTAB 2006).
707.03(d) Refusal to Answer Deposition Question	Amended first paragraph to clarify what information may be withheld by witness.
	Amended second paragraph to clarify that a party may seek the assistance of a court when the deposition is being taken pursuant to subpoena.
707.04 Waiver of Objection	Amended paragraph 7 to include failure to make objections in an appendix to brief or statement of objections filed with brief as waiver of objections raised at trial.
	Added new case to Note 1: <i>Coach Services Inc. v. Triumph Learning LLC</i> , 96 USPQ2d 1600 (TTAB 2010).
	Added new Note 2, citing: <i>Hornby v. TJX Companies, Inc.</i> , 87 USPQ2d 1411, 1417 (TTAB 2008).
	Deleted the following from Note 4: “ <i>Official Gazette</i> of June 21, 1983 at 1031 TMOG 13, at

	22;” and “T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: The Rules Are Changing</i> , 74 Trademark Rep. 269, 274 (1984).”
	Added new cases to Note 5: <i>Anthony’s Pizza & Pasta International, Inc. v. Anthony’s Pizza Holding Co., Inc.</i> , 95 USPQ2d 1271, 1273 n.4 (TTAB 2009), <i>aff’d</i> , No. 2010-1191, slip op. (Fed. Cir. Nov. 18, 2010); <i>7-Eleven, Inc. v. Wechsler</i> , 83 USPQ2d 1715, 1718 n.25 (TTAB 2007); <i>Wet Seal Inc. v. FD Management Inc.</i> , 82 USPQ2d 1629, 1632 (TTAB 2007); <i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 USPQ2d 1100, 1104 (TTAB 2007); <i>Duramax Marine LLC v. R.W. Fernstrum & Co.</i> , 80 USPQ2d 1780, 1785 (TTAB 2006); <i>First Niagara Insurance Brokers Inc. v. First Niagara Financial Group Inc.</i> , 77 USPQ2d 1334, 1340 n.14 (TTAB 2005), <i>rev’d on other grounds</i> , 476 F.3d 867, 81 USPQ2d 1375 (Fed. Cir. 2007).

INDEX TO CHANGES IN THIRD EDITION **CHAPTER 800**

TBMP SECTION

NATURE OF CHANGE

801 Briefs on the Case	Section Heading only.
801.01 Briefs on the Case: In General	Amended paragraph 2 to add that exhibits to briefs are generally unnecessary and are discouraged.
	Amended paragraph 3 to add that Board will deem claim or affirmative defense waived if not referenced in brief.
	Added new Note 1, citing: <i>Life Zone Inc. v. Middleman Group Inc.</i> , 87 USPQ2d 1953, 1955 (TTAB 2008) and <i>ITC Entertainment Group Ltd v. Nintendo of America Inc.</i> , 45 USPQ2d 2021, 2022 (TTAB 1998).
	Added new Note 2, citing: <i>Barbara's Bakery Inc. v. Landesman</i> , 82 USPQ2d 1283, 1292 (TTAB 2007) and <i>Knight Textile Corp. v. Jones Investment Co.</i> , 75 USPQ2d 1313, 1314 n.4 (TTAB 2005).
801.02 Time for Filing	No substantive changes.
801.02(a) Plaintiff's Main Brief	No substantive changes.
801.02(b) Briefs on the Case: Defendant's Main Brief	Deleted "T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: The Rules Are Changing</i> , 74 Trademark Rep. 269, 275 (1984)" from Note 1.
801.02(c) Briefs on the Case: Plaintiff's Reply Brief	Deleted "T. Jeffrey Quinn, <i>TIPS FROM THE TTAB: The Rules Are Changing</i> , 74 Trademark Rep. 269, 275 (1984)" from Note 1.
801.02(d) Reply Brief for Defendant Not Permitted	Amended first paragraph to advise reader that defendant may counter arguments raised by plaintiff in its reply brief during oral argument. Added new Note 1, citing: <i>United Foods Inc. v. United Airlines, Inc.</i> , 33 USPQ2d 1542 (TTAB 1994).
801.02(e) Special Situations	At the end of the second paragraph, amended the citation to the TBMP to specifically identify the relevant form in the Appendix of Forms.
	At the end of the third paragraph, deleted the reference to TBMP § 1109 (example of a briefing schedule in a concurrent use proceeding) because the briefing schedule has been deleted.

801.03 Form and Contents of Brief	Amended reference to 37 CFR § 2.126 to reflect rules changes.
	Amended first paragraph to inform reader that briefs may not be filed on CD-ROM. Deleted instruction to file paper copy of brief together with CD-ROM format, as latter format is no longer permitted.
	Added sentence in paragraph 3 that appendices to a brief may not be used to avoid the page limitation.
	Amended paragraph 5 to advise reader that non-precedential cases may be cited in motions and briefs.
	Added a new sixth paragraph, explaining that parties may cite cases from any jurisdiction, but that the Board relies primarily on precedent from the Court of Appeals for the Federal Circuit because that court is the Board's reviewing court and because its cases address registration issues more specifically.
	Amended paragraph 9 to add a statement clarifying that the reply brief should be limited to the key points in defendant's brief which plaintiff believes require clarification or response.
	In the subsection titled "Confidential information" amended available for public "inspection and copying" to "viewing via TTABVUE" and provided website address; further amended first paragraph of the subsection to explain how to file confidential information in paper form or via ESTTA and advised reader that majority of TTAB records since 2001 have been stored electronically.
	In the penultimate paragraph of this subsection, deleted "Confidential materials filed in the absence of a protective order are not regarded as confidential and will not be kept confidential by the Board," and inserted "The Board's standard protective order is applicable during disclosure, discovery and trial in all proceedings, unless modified by the parties." Further amended the paragraph to indicate that ESTTA filing is strongly encouraged and that material designated as confidential must be filed in paper under separate cover or designated in ESTTA as confidential using the separate filing option.

	Added new Note 1, referencing 37 CFR § 2.126, to explain that a brief filed by CD-ROM may not be considered and that the only time a party may file a CD-ROM is as an exhibit to a deposition introducing audio and/or video evidence.
	Deleted from Note 4: <i>Consorzio del Prosciutto di Parma v. Parma Sausage Products Inc.</i> , 23 USPQ2d 1894 (TTAB 1992).
	Added new Note 5, citing: <i>Harjo v. Pro-Football Inc.</i> , 45 USPQ2d 1789, 1792 (TTAB 1998).
	Added new Note 6, citing: <i>In re Carlson</i> , 91 USPQ2d 1198, 1199 n.2 (TTAB 2009).
	Added new Note 7, citing: “Citation of Opinions to the Trademark Trial and Appeal Board,” OG Notices: 23 January 2007.
	Added new Note 8, citing: <i>Grand Canyon West Ranch LLC v. Hualapai Tribe</i> , 88 USPQ2d 1501, 1506 n.2 (TTAB 2008).
	Added new reference to Note 9: 37 CFR § 2.27(d).
	Amended Notes 10 and 11 to update the reference to 37 CFR § 2.126(c) from former 37 CFR § 2.126(d). Deleted from Note 10: “Rany L. Simms, <i>TIPS FROM THE TTAB: Stipulated Protective Agreements</i> , 71 Trademark Rep. 653 (1981).”
	Deleted from Note 12: “ <i>Harjo v. Pro-Football, Inc.</i> , 50 USPQ2d at 1713-1714 (Board agreed to hold exhibits marked confidential for thirty days pending receipt of a motion for a protective order but cautioned that in the absence of such motion, the exhibits would be placed in the proceeding file).”
	Deleted what was formerly Note 13, referencing: “David J. Kera, <i>TIPS FROM THE TTAB: Preparing and Filing Briefs with the Trademark Trial and Appeal Board</i> , 66 Trademark Rep. 141 (1976).”
801.04 Amicus Briefs	No substantive changes.
801.05 Motion to Strike Brief on Case	No substantive changes.
802 Oral Hearing	Amended reference to 37 CFR § 2.129(a) to reflect August 31, 2007 rules changes.
802.01 Oral Hearing: In General	At the end of the second paragraph, added the following sentence: “If neither party requests an

	oral hearing, the case will be decided on the evidence made of record during the testimony periods.”
	Deleted from Note 2: “Saul Lefkowitz, <i>TIPS FROM THE TTAB: Presentation of an Oral Hearing Before the Trademark Trial and Appeal Board</i> , 67 Trademark Rep. 283 (1977).”
802.02 Request for Oral Hearing	No substantive changes.
802.03 Time and Place of Hearing	Amended first paragraph to clarify that hearings are only scheduled on Tuesday, Wednesday or Thursday and that they are scheduled between 10:00 and 3:00 (Eastern Standard Time).
	Revised the process detailed in second paragraph of subsection for requesting attendance at an oral hearing via video conferencing.
	Deleted, as no longer applicable, discussion of off-site video conference centers available for use for oral hearings located in Sunnyvale, California and Detroit, Michigan.
	In Note 4, changed 37 CFR § 2.129(a) to (b).
802.04 Before Whom Held	Changed references to Board members to judges.
	In Note 1, deleted reference to 37 CFR § 2.142(e)(1) and added comment to advise reader that judges no longer provide handwritten signature on decisions.
	In Note 2, amended parenthetical to <i>Ronson Corp. v. Ronco Teleproducts, Inc.</i> , 197 USPQ 492, 494 (Comm'r 1978) to change reference to judges to Board members.
	Added new references to Note 3: <i>In re Lebanese Arak Corp.</i> , 94 USPQ2d 1215 (TTAB 2010) and <i>In re Active Ankle Systems Inc.</i> , 83 USPQ2d 1532 (TTAB 2007).
802.05 Length of Oral Argument	In the first paragraph, added the clarification that no additional time for oral argument is allotted for counterclaims or consolidated proceedings.
802.06 Audio Recording and Video Recording	Changed title and section to delete “taping” and replace with “recording.”
802.07 Visual Aids, etc.	Amended section to refer to video “recording” instead of video “tape.”
802.08 Nature of Hearing	Changed “Board members” to “judges.”
	Deleted reference to: “Saul Lefkowitz, <i>TIPS</i>

	<i>FROM THE TTAB: Presentation of an Oral Hearing Before the Trademark Trial and Appeal Board</i> , 67 Trademark Rep. 283 (1977)."
803 Final Decision	Changed "Board members" and "panel members" to "judges."
	Amended paragraph 5 to add the fact that final decisions are available for public viewing via TTABVUE and the USPTO e-FOIA database, and provided web address for accessing same.
	Deleted the following from penultimate paragraph: "decisions are grouped first by year decided and then by issues. Within the groupings of issues, the decisions are listed by proceeding number."
	Added new Note 2, citing, by example: <i>In re Lebanese Arak Corp.</i> , 94 USPQ2d 1215 (TTAB 2010).
804 Request for Rehearing, Reconsideration, or Modification of Final Decision	No substantive changes.
805 Final Decision Remand to Examining Attorney	No substantive changes.
806 Termination of proceeding	Replaced former step-by-step listing of operating procedures taken upon termination of proceeding with new listing to reflect electronic workflow; deleted the former listing of operating procedures as obsolete.
	Added new Note 1, citing: 37 CFR § 2.145(c).
807 Status of Application After Proceeding	Amended second paragraph to reflect the electronic workflow.

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 900**

TBMP SECTION	NATURE OF CHANGE
901 Appeals--In General	Amended reference to Trademark Act § 21 to reflect changes to statute.
901.01 Avenues of Appeal	Added sentence to inform reader that Federal Circuit is often referred to in Board decisions as "our primary reviewing court."
	Updated reference to Trademark Act § 21(a)(1) by including "(a)(1)" in parallel reference.
	Added new Note 4, citing: <i>In re Thor Tech</i> , 90 USPQ2d 1634, 1637 (TTAB 2009); <i>Giersch v. Scripps Networks Inc.</i> , 90 USPQ2d 1020, 1024 (TTAB 2009); <i>Grand Canyon West Ranch LLC v. Hualapai Tribe</i> , 88 USPQ2d 1501, n.2 (TTAB 2008); and <i>Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.</i> , 77 USPQ2d 1492, 1514 (TTAB 2005), <i>aff'd</i> 479 F.3d 825, 81 USPQ2d 1919 (Fed. Cir. 2007).
901.02 What May Be Appealed	Section heading only.
901.01(A) Final Decision Versus Interlocutory Decision	Amended parenthetical to <i>Hewlett Packard v. Vudu, Inc.</i> , 92 USPQ2d 1630, n.5 (TTAB 2009) in Note 2.
901.02(b) Judgment Subject to Establishment of Constructive Use	No substantive changes.
902 Appeal To Court Of Appeals For The Federal Circuit	Section Heading only.
902.01 Notice Of Appeal	Amended reference to 37 CFR § 104.2 to reflect rule changes; updated USPTO address in second paragraph to correct address to use for mailing notice of appeal and updated contact information in fourth paragraph from Office of the General Counsel to Office of the Solicitor.
	Updated Notes 1 and 8 to display correct website address for Federal Circuit court.
902.02 Time for Filing Notice of Appeal; Cross Appeal	Amended first paragraph to clarify filing deadlines for filing appeal when period falls on February 28, or on a Saturday, Sunday, or Federal holiday.
	Amended paragraph 3 to explain how to calculate time to file appeal following request for rehearing, reconsideration, or modification; and explained

	that Board rules do not permit second or subsequent request for reconsideration.
	Updated paragraphs 5 and 6 to advise correct address at which to file request for extension of time to file an appeal and that the Director acts through the Office of the Solicitor to determine timeliness of request.
	Added new Notes 2, 3, 6, and 7, referencing: 37 CFR § 2.129(d)(2).
902.03 Appeal To Federal Circuit Waives Appeal By Civil Action	No substantive changes.
902.04 Notice of Election to Have Review By Civil Action	Amended first paragraph to update contact information for filing notice of election by mail.
902.05 Information Concerning Times Specified In 37 CFR § 2.145	No substantive changes.
902.06 Certified List	Amended first paragraph to clarify that it is the Director, acting through the Office of the Solicitor, who handles preparation of the certified list.
902.07 Appeal Briefs, Appendix, Etc.	Updated contact information for Federal Circuit to include current website address; deleted reference to “Federal Circuit Rules and Appeals to the Federal Circuit From PTO, 1120 TMOG 22 (November 13, 1990)” as redundant.
902.08 Special Provisions for Ex Parte Cases	Amended first paragraph to indicate that the Director acts through the Office of the Solicitor; added new paragraph 3 to advise reader that questions regarding contents of the appendix should be directed to the Office of the Solicitor; and added new paragraph 4 to advise reader that USPTO may move to participate as appellee in <i>inter partes</i> case.
	Added new Note 3, citing: <i>In re Bose Corp.</i> , 580 F.3d. 1240, 91 USPQ2d 1938, 1939 (Fed. Cir. 2009)
903 Appeal By Civil Action	Section Heading only.
903.01 Notice of Civil Action	Clarified that Board may treat its own decision as final in event party fails to notify Board of commencement of civil action.
903.02 Parties To And Service Of Civil Action	No substantive changes.
903.03 Place Of Civil Action	Added paragraph to indicate USPTO resides in Eastern District of Virginia.

	Added new Note 2, referencing 35 U.S.C. § 1(b).
903.04 Time For Filing Civil Action, Cross-Action	Added reference to 37 CFR § 2.145(d)(2); amended first and second paragraphs to clarify calculation of filing deadlines when period falls on February 28, or on a Saturday, Sunday, or Federal holiday and calculation following request for rehearing, reconsideration, or modification; explained that Board rules do not permit second or subsequent request for reconsideration.
	Added address of Office of the Solicitor for mailing purposes to paragraph 4.
	Added new Notes 2, 3, 7, and 8, referencing: 37 CFR § 2.145(d)(2).
903.05 Information Concerning Times Specified In 37 CFR § 2.145	No substantive changes.
903.06 Civil Action Precluded By Appeal To Federal Circuit	No substantive changes.
903.07 Special Provisions For Ex Parte Cases	No substantive changes.
904 Access To Record During Appeal	Section Heading only.
904.01 Access During Appeal To Federal Circuit	Added new paragraph to inform reader about TTABVUE and inspection of files.
904.02 Access During Appeal By Civil Action	Added new paragraph to inform reader about TTABVUE and inspection of files.
	Added new Note 1, referencing: 15 U.S.C. § 1071(b)(3).
905 Petition To The Director	Amended reference to 37 CFR § 2.146(c) to reflect rules changes.
	Amended paragraph 6 to clarify that petition must be filed with “two months,” not “60 days.”
	Amended paragraph 7 to inform reader that Board may exercise discretion to suspend inter partes proceeding pending Director’s decision on petition.
906 Standards Of Review Of Board Decisions	Amended text to clarify party’s options to seek review of Board’s decision by either appeal to U.S. Court of Appeals for the Federal Circuit or by filing a civil action in a federal district court.
906.01 Appeal To Federal Circuit Or By Civil Action	Amended paragraph 5 to explain that under substantial evidence standard, Board’s decision must be sustained where it represented one of two different conclusions, each warranted by the

	record.
	Amended statement, in paragraph 6, setting forth examples of findings of fact to delete reference to review thereof under “substantial deference” standard.
	Amended subsection headed “Conclusions of law” to delete “without deference to the Board” in explaining that conclusions of law are reviewed de novo.
	Added two new paragraphs to subsection headed “Conclusions of law” to provide examples for the reader of conclusions of law and further information regarding “substantial deference” standard.
	Added new case to Note 8: <i>Aycock Engineering Inc. v. Airflite Inc.</i> , 90 USPQ2d 1301, 1304 (Fed. Cir. 2009); added parenthetical to citation of <i>On-line Careline Inc. v. America Online Inc.</i> , 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000) in Note 8.
	Added new note 14, citing: <i>In re Bayer Aktiengesellschaft</i> , 488 F.3d 960, 82 USPQ2d 1828, 1836 (Fed. Cir. 2007), <i>citing In re Jolley</i> , 308 F.3d 1317, 64 USPQ2d 1901, 1904 (Fed. Cir. 2002).
	Added new note 15, citing: <i>On-line Careline Inc. v. America Online Inc.</i> , 229 F.3d 1080, 56 USPQ2d 1471, 1476 (Fed. Cir. 2000).
	Added new note 16 citing: <i>Valu Engineering Inc. v. Rexnord Corp.</i> , 278 F.3d 1268, 61 USPQ2d 1422, 1424 (Fed. Cir. 2002).
	Added new note 17 citing: <i>Towers v. Advent Software Inc.</i> , 913 F.2d 942, 16 USPQ2d 1039, 1040 (Fed. Cir. 1990); <i>In re Oppedahl & Larson LLP</i> , 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004); <i>In re Compagnie Generale Maritime</i> , 993 F.2d 841, 845, 26 USPQ2d 1652, 1654 (Fed.Cir.1993); and <i>In re Chippendales USA</i> , 2009-1370, slip op. at 6 (Fed. Cir. 2010).
	Added new note 18 citing: <i>In re Slokevage</i> , 441 F.3d 957, 78 USPQ2d 1395, 1397 (Fed. Cir. 2006).
	Added new note 19 citing: <i>On-line Careline Inc. v. America Online Inc.</i> , 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); <i>Glendale</i>

	<i>Int'l. Corp. v. USPTO</i> , 374 F. Supp. 2d 479, 75 USPQ2d 1139, 1143 (E.D. Va. 2005).
	Added new note 20 citing: <i>Herbko International Inc. v. Kappa Books Inc.</i> , 308 F.3d 1156, 64 USPQ2d 1375, 1377 (Fed. Cir. 2002); <i>Spraying Systems Co. v. Delavan Inc.</i> , 975 F.2d 387, 24 USPQ2d 1181, 1184 (7th Cir. 1992); <i>Sunrise Jewelry Mfg. Corp. v. Fred, S.A.</i> , 175 F.3d 1322, 50 USPQ2d 1532, 1534 (Fed. Cir. 1999).
	Added new note 21, citing: <i>In re Mighty Leaf Tea</i> , 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); <i>Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772</i> , 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005); <i>In re Majestic Distilling Co.</i> , 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003).
	Added new note 22, citing: <i>ITC Ltd. v. Punchgini, Inc.</i> , 482 F.3d 135, 159, 82 USPQ2d 1414 (2nd Cir. 2007); <i>Star Industries Inc. v. Bacardi & Co. Ltd.</i> , 412 F.3d 373, 75 USPQ2d 1098, 1102, n.2 (2nd Cir. 2005); <i>Int'l Bancorp, LLC, Int'l Services, Inc.; Int'l Lotteries, LLC; Las Vegas Sportsbook, Inc.; Britannia Finance Corp. v. Societe des Bains de Mer et du Cercle des Etrangers a Monaco</i> , 329 F.3d 359, 66 USPQ2d 1705 (4th Cir. 2003); <i>In re Hacot-Colombier</i> , 105 F.3d 616, 41 USPQ2d 1523, 1525 (Fed. Cir. 1997); <i>Eastman Kodak Co. v. Bell & Howell Document Management Prods., Co.</i> , 994 F.2d 1569, 26 USPQ2d 1912, 1915-16 (Fed.Cir.1993); <i>Kohler Co. v. Moen Inc.</i> , 12 F.3d 632, 634 (7th Cir. 1993); and, by signal "but see:" <i>In re Save Venice New York Inc.</i> , 259 F.3d 1346, 59 USPQ2d 1778, 1781 (Fed. Cir. 2001); <i>In re International Flavors & Fragrances, Inc.</i> , 183 F.3d 1361, 51 USPQ2d 1513, 1515 (Fed. Cir. 1999).
	Added new note 23, citing: <i>Custom Computer Services Inc. v. Paychex Properties Inc.</i> , 337 F.3d 1334, 67 USPQ2d 1638, 1639 (Fed. Cir. 2003).
906.02 Petition To Director	No substantive changes.

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 1000**

TBMP SECTION

NATURE OF CHANGE

1001 In General	Amended Note 2 by changing “TMEP § 1208.01(a)” to “TMEP § 1208.03(a) et seq. and 1507.”
	Amended Note 3 by changing “TMEP §1208.01” to “TMEP § 1208.02(c).”
1002 Declaration of Interference	Amended Note 4 by deleting “[note]” in citation of 15 U.S.C. § 1051.
	Amended Note 7 by changing “TMEP § 1208.03(a)” to “TMEP § 1208.03.”
1003 Institution of Interference	Amended paragraph 4 to expand listing of dates that may be set by the Board in a notice instituting an interference, and to note that dates are set that are deemed appropriate for the particular case.
	Amended Note 1 by changing “TMEP § 1208.02(c)” to “TMEP § 1208.03(c).”
1004 Issues in Interference	Amended Note 1 to delete reference to “Saul Lefkowitz and Janet E. Rice, <i>Adversary Proceedings Before the Trademark Trial and Appeal Board</i> , 75 Trademark Rep. 323, 325 (1985).” Updated reference to “Rules of Practice in Trademark Cases, Final Rule, 48 Fed. Reg. 23122 (May 23, 1983)” by changing it from “Notice of Final Rulemaking published in the Federal Register on May 23, 1983 at 48 FR 23122, and in the Official Gazette of June 2, 1983 at 1031 TMOG 13.”
1005 Burden of Proof	No substantive changes.
1006 Addition of Party	No substantive changes.
1007 Conduct of Proceeding	Amended paragraph 2 by adding: “including dates for a discovery conference, initial and expert disclosures, an opening and closing date for discovery, and pretrial disclosures and rebuttal disclosures” to listing of what is in a notice of interference; and by indicating that Board will set dates deemed appropriate for the particular case.
	Amended paragraph 2 by deleting reference to thirty-day separation between discovery and testimony periods and added statement to inform reader that scheduling order includes time for

	pretrial disclosures of witnesses.
	Amended paragraph 2 by advising reader about the availability of ACR, and referencing TBMP §§ 528.05(a)(2) and 702.04.”
	Deleted sample trial and briefing schedule under the former Trademark Rules.
	Added new reference to Note 1: 37 CFR § 2.115.
	Added new Note 2, citing: <i>Micro Motion Inc. v. Danfoss A/S</i> , 49 USPQ2d 1628, 1662 n.2 (TTAB 1998); and <i>Eveready Battery Co., Inc. v. Green Planet, Inc.</i> 91 USPQ2d 1511 (TTAB 2009).
	Added new Note 3, referencing: 37 CFR § 2.121(e).

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 1100**

TBMP SECTION

NATURE OF CHANGE

1101 In General	Amended reference to 15 U.S.C. §§ 1052, 1067, and 1068 to reflect statutory amendments.
1101.01 Nature of Proceeding	Amended to inform reader that a concurrent use application is a restricted application; that restrictions are generally to claimed geographic areas of use; that applicant must show that no likelihood of confusion will result; that concurrent use registration not provided for in dilution context; and that disclosure and conferencing regime has been adopted.
	Added new references and cases to Note 1: 37 CFR § 2.133(c); <i>Nobelle.com LLC v. Qwest Communications International Inc.</i> , 66 USPQ2d 1300, 1307 (TTAB 2003).
	Added new Note 2, citing: Trademark Act § 17, 15 U.S.C. § 1067.
	Added new case to Note 4: <i>Nobelle.com LLC v. Qwest Communications International Inc.</i> , 66 USPQ2d 1300, 1307 (TTAB 2003); deleted text in Note 4 citing TBMP § 1103.01(b) for information on dates and jurisdictional requirement.
	Added new Note 5, citing: <i>Enterprise Rent-A-Car Co. v. Advantage Rent-A-Car Inc.</i> , 330 F.3d 1333, 66 USPQ2d 1811, 1819 (Fed. Cir. 2003).
	Added new Note 6, citing: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244-7 (August 1, 2007).
1101.02 Context for USPTO Determination of Concurrent Rights	Amended “concurrent rights” to “concurrent registration rights;” amended second paragraph to inform reader that while registration may not be amended to include territorial restrictions in order to settle a cancellation action, registrant may agree to entry of judgment against itself or surrender its registration; and that cancellation action may be suspended; added reference to TBMP § 1113.02.
	Added new cases to Note 2: <i>Enterprise Rent-A-Car Co. v. Advantage Rent-A-Car Inc.</i> , 330 F.3d 1333, 66 USPQ2d 1811, 1815 (Fed. Cir. 2003); and <i>Jansen Enterprises Inc. v. Rind</i> , 85 USPQ2d 1104, 1106 n.3 (TTAB 2007).
	Added new Note 5, citing: <i>Chichi's, Inc. v. Chi-</i>

	<i>Chi's, Inc.</i> , 222 USPQ 831, 832 (Comm'r 1984).
1102 Generation of Proceeding	Section Heading only.
1102.01 Means of Generation	Amended to add reference to Trademark Act § 17, 15 U.S.C. 1067; to quote directly from 15 U.S.C. 1041(a)(3)(D) instead of paraphrasing the statute; and to include statement of additional requirements for concurrent use application.
	Added new case to Note 1: <i>J&D Home Improvement Inc. v. Basement Doctor Inc.</i> , 65 USPQ2d 1958 (D. Del. 2003); added parenthetical to <i>Chichi's, Inc. v. Chi-Chi's, Inc.</i> , 222 USPQ 831, 832 (Comm'r 1984).
	Deleted reference to Rany L. Simms, <i>TIPS FROM THE TTAB: The Concurrent User as Opposer</i> , 67 Trademark Rep. 654 (1977); and Janet E. Rice, <i>TIPS FROM THE TTAB: Concurrent Use Applications and Proceedings</i> , 72 Trademark Rep. 403, 406 (1982).
	Added new references to Note 2: Trademark Act §§ 1(a)(3)(D)(i), and 1(a)(3)(D)(ii)(I-IV), §§ 1051(a)(3)(D)(i) and 1051(a)(3)(D)(ii)(I-IV).
	Added new Note 3, citing: 37 CFR § 2.42.
1102.02 Bases for Concurrent Registration Board Determination; Court Determination	Amended to clarify statement that concurrent registration may be based on prior Board decision; added reference to TBMP § 1103.01.
1103 Requirements for Concurrent Use Application	Amended references to 15 U.S.C. §§ 1051(a)(1) and 1052 and to 37 CFR §§ 2.42, 2.73, and 2.99 to reflect statutory and rule changes.
1103.01 Application Based on Board Determination	Amended to add list of requirements for concurrent use applicants; added references to TBMP §§ 1103.01(a), (b) and (c); amended to inform reader of concurrent use applicant's obligation to serve copies of the application, specimens and drawing on each excepted user.
	Added new Note 1, citing: Trademark Act § 2(d), 15 U.S.C. § 1052(d); and 37 CFR § 2.99(g).
	Added new Note 2, citing: Trademark Act § 2(d), 15 U.S.C. § 1052(d).
	Added new Note 3, citing: 37 CFR § 2.42; and Trademark Act § 1(a)(3)(D), 15 U.S.C. § 1051(a)(3)(D).
	Added new Note 4, citing: 37 CFR § 2.42.
	Added new Note 5, citing: 37 CFR §§ 2.32-2.41.
	Added new Note 6, citing: 37 CFR § 2.99(b) and

	37 CFR § 2.99(c).
1103.01(a) Application Must Assert Use in Commerce	Deleted extraneous text modifying “a Board determination;” amended to add information as to when applicant may seek concurrent use registration, citing TMEP § 1207.04(b).
	Amended “amendment to allege use or statement of use” to “allegation of use.”
	Amended to inform reader that applications based solely on Trademark Act § 44 or § 66(a) are not subject to concurrent use registrations; and that where the sole basis is § 1(b), the allegation of use must be filed prior to any amendment to seek concurrent use registration.
	Added new case and reference to Note 1: Trademark Act § 2(d), 15 U.S.C. § 1052(d); and <i>Action Temporary Services Inc. v. Labor Force Inc.</i> , 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989).
	Added new Note 4, citing: 37 CFR § 2.99(g); TMEP § 1207.04(b); and Miscellaneous Changes to Trademark Rules of Practice, 73 Fed. Reg. 67759 (Nov. 17, 2008).
	Added new Note 5, citing: 37 CFR § 2.73.
1103.01(b) Jurisdictional Requirement	Amended “seeking...registration based on a Board determination through a concurrent use proceeding” to “seeking...registration through a concurrent use proceeding before the Board;” clarified meaning of jurisdictional requirement; amended text to enumerate the two circumstances where concurrent use applicant need not meet jurisdictional requirement.
	New cases added to Note 2: <i>CDS Inc. v. I.C.E.D. Management, Inc.</i> , 80 USPQ2d 1572, 1580 n.12 (TTAB 2006); <i>Ole’ Taco Inc. v. Tacos Ole, Inc.</i> , 221 USPQ 912, 915 (TTAB 1984); <i>The Pennsylvania Fashion Factory, Inc. v. Fashion Factory, Inc.</i> , 215 USPQ 1133, 1136 (TTAB 1982); and <i>Fleming Companies v. Thriftway Inc.</i> , 21 USPQ 1451 (TTAB 1991), <i>aff’d</i> , 26 USPQ2d 1551, 1553 (S.D. Ohio 1992).
1103.01(c) Application Must Meet Requirements Applicable to Non-Restricted Application	Deleted “those of” from “elements required by those of the rules of practice.”
1103.01(d) Application Must Identify Nature and	Section Heading only.

Extent of Restriction Sought	
1103.01(d)(1) In General	Amended to add citations to 37 CFR § 2.42; 15 U.S.C. § 1051(a)(3)(D); and TBMP § 1103.01(e).
	Added new second paragraph listing elements for statement required of concurrent use applicant and amended third paragraph to inform reader of reason for statement.
1103.01(d)(2) Geographic Restrictions	Amended section to move information as to how concurrent rights generally arise to first paragraph of section.
	Corrected reference to “subsequent user’s” to “applicant’s” in second paragraph; amended to expand upon information regarding circumstances under which subsequent user may seek concurrent use registration.
	Added <i>Gray v. Daffy Dan's Bargaintown</i> , 823 F.2d 522, 3 USPQ2d 1306, 1307 (Fed. Cir. 1987) to Note 1.
	Amended Note 2 to change “later” to “subsequent;” “senior” to “prior;” and “second” to “subsequent.”
	Added new case to Note 3: <i>Newsday, Inc. v. Paddock Publications, Inc.</i> , 223 USPQ 1305, 1307-8 (TTAB 1984).
1103.01(d)(3) Mode of Use Restrictions	Added new Note 1, citing: <i>The Tamarkin Co. v. Seaway Food Town Inc.</i> , 34 USPQ2d 1587, 1589 n.4 (TTAB 1995).
	Added new case to Note 3: <i>Nobelle.com LLC v. Qwest Communications Int'l Inc.</i> , 66 USPQ2d 1300, 1302 n.4 (TTAB 2003).
	Added parenthetical to <i>Holiday Inn v. Holiday Inns, Inc.</i> , 534 F.2d 312, 189 USPQ 630, 635 (CCPA 1976) in Note 4.
	Added parenthetical to <i>The Tamarkin Co. v. Seaway Food Town Inc.</i> , 34 USPQ2d 1587, 1589 (TTAB 1995) in Note 5; added new case to Note 5: <i>Ex parte Crossett Lumber Co.</i> , 89 USPQ 29 (USPTO 1951).
	Added parenthetical to <i>The Tamarkin Co. v. Seaway Food Town Inc.</i> , 34 USPQ2d 1587, 1590-91 (TTAB 1995) in Note 6.
	Added parenthetical to <i>The Tamarkin Co. v. Seaway Food Town Inc.</i> , 34 USPQ2d 1587, 1591 n.7 (TTAB 1995) in Note 7.
1103.01(e) Application	Amended first paragraph to cite TBMP

Must Identify Excepted Users and Their Asserted Rights	§§ 1103.01(d)(1)-(3); edited second paragraph for clarity.
	Added new citation to Note 1: Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42243 (August 1, 2007).
1103.01(f) Other Requirements	Amended references to 37 CFR §§ 2.99(b), 2.80, and 2.99(c) to reflect changes.
	Amended second paragraph to indicate that concurrent use applicant must serve copies of the application, specimens and drawing on each excepted user; deleted requirement that applicant furnish copies to the Board and that Board utilizes the copies when instituting a concurrent use proceeding; added citation to TBMP § 1106. Also amended statement as to marking of file by examining attorney to reflect other possible limitations that would be included in the application.
	Amended Note 1 to include reference to 37 CFR §§ 2.99(c) and (d).
1103.02 Application Based on Prior Board Decision	Amended first paragraph to delete general reference that applicant must follow “other rules of practice in trademark cases” in favor of remaining specific statement; further amended first paragraph to add statement that while Board may obtain a copy of its prior decision, this is not always possible; and edited for clarity of writing style.
	Amended eighth paragraph to inform reader that Board’s institution order will order concurrent use applicant to serve on involved registrant copies of its application, specimens and drawing.
	Amended fourth paragraph to inform reader that where no new concurrent use proceeding is necessary, concurrent use applicant need not serve copies; and updated reference to 37 CFR § 2.99 by replacing “37 CFR § 2.99(b)” with “37 CFR § 2.99(d)(1).”
	Amended to inform readers of concurrent use applicant’s service requirement.
	Updated reference in Note 4 to 37 CFR § 2.99 by replacing “37 CFR § 2.99(b)” with “37 CFR § 2.99(d)(1).”
1103.03 Application Based on Court Determination	Amended reference to 37 CFR § 2.99 to reflect rules changes; amended to inform reader that application must comply with all elements required

	for an unrestricted registration; amended to add statement that while Board may attempt to obtain a copy of court decision, this is not always possible.
	Amended to inform reader that concurrent use applicant must serve copies of its application, specimens and drawing on excepted users if institution of concurrent use proceeding is required, but not if institution of proceeding is unnecessary.
	Amended to add new Note 1, citing 37 CFR § 2.42 (described in TBMP §§ 1103.01(c) – (f)) and 37 CFR § 2.32 et. al.
	Updated reference in Note 5 to 37 CFR §2.99(d)(1) by replacing “(b)” with “(d).”
1104 Parties to Proceeding; Involved Applications, Registrations	Edited for clarity; amended to inform reader that concurrent use proceeding may be suspended pending clearance of amended application; and brought informational text from Note 1 regarding rights of common law users into body of section; added references to TBMP § 1103.01(b) and § 1108.
	Added new cases to Note 1: <i>Fleming Companies Inc. v. Thriftway Inc.</i> , 21 USPQ2d 1451 (TTAB 1991); <i>Georgia-Southern Oil Inc. v. Richardson</i> , 16 USPQ2d 1723, 1725 n.5 (TTAB 1990); and <i>Newsday, Inc. v. Paddock Publications, Inc.</i> , 223 USPQ 1305, 1308 (TTAB 1984).
	Changed signal reference to <i>Gallagher's Restaurants Inc. v. Gallagher's Farms Inc.</i> , 3 USPQ2d 1864, 1866 (TTAB 1986) in Note 2 from “see” to “cf.”
	Added new Note 3, citing <i>Fleming Companies Inc. v. Thriftway Inc.</i> , 21 USPQ2d 1451, 1453 (TTAB 1991) and <i>Newsday, Inc. v. Paddock Publications, Inc.</i> , 223 USPQ 1305, 1307-8 (TTAB 1984).
	Deleted reference to <i>Georgia-Southern Oil Inc. v. Richardson</i> , 16 USPQ2d 1723, 1725 n.5 (TTAB 1990) in Note 5; added parenthetical to <i>Georgia-Southern Oil Inc. v. Richardson</i> , 16 USPQ2d 1723, 1725 n.5 (TTAB 1990) in Note 6.
1105 Applications and Registrations Not Subject to Proceeding	Updated references to 37 CFR § 2.73 and 2.99(g) to reflect rules changes; added new second paragraph to clarify that applications based solely on § 44 or § 66 cannot be subject to concurrent use proceeding; amended third paragraph to inform reader that applications arising under Trademark Act § 1(b) may not be amended to assert

	concurrent use during opposition period; added reference to TBMP § 1113.01.
	Added new Note 2, citing 37 CFR § 2.99(g).
	Added new Note 5, citing TMEP § 1104.03(b).
	Added new Note 6, citing 37 CFR § 2.135.
1106 Commencement of Proceeding	Section heading only.
1106.01 Marking of Concurrent Use Application	No changes made.
1106.02 Publication of Concurrent Use Application; Opposition Period	Amended first paragraph to inform reader of processing through Board's electronic system; edited section throughout for clarity; amended fourth paragraph to delete reference to physical file being transmitted to Board.
1106.03 Preparing the Record for the Involved Application and Registration Files (new title)	Changed title from "Obtaining Included Application and Registration Files" to "Preparing the Record for the Involved Application and Registration Files;" updated section to delete reference to Board's obtaining physical files to reflect current Board practice.
1106.04 Preparing Concurrent Use Notices	Amended first paragraph to inform reader that Board electronically tracks concurrent use application following publication and sends notices; added new second paragraph that explains service rules whereby applicant is given time to serve on each excepted user copies of application, specimen and drawing and to file proof of service with the Board; and amended third paragraph to explain nature of institution order and trial scheduling.
	Added new sixth paragraph to include information regarding notice via e-mail and by publication in the Official Gazette.
	Amended seventh paragraph to inform reader that Board no longer serves copy of involved application and that applicant need not provide Board with copies of same.
	Amended eighth paragraph to indicate that Board does not set trial schedule when sole purpose of concurrent use proceeding is to issue show cause order to registrant.
	Added new Note 1, citing 37 CFR §§ 2.99(d)(1) and 2.119(a).
	Added new Note 2, citing 37 CFR § 2.99(d)(1).
	Added new Note 3, citing 37 CFR § 2.119.
	Added new Note 4, citing 15 U.S.C. § 1052(d) and

	defining “excepted user.”
	Inserted “ <i>cf.</i> ” signal in Note 7 before citation to 37 CFR § 2.113(c).
	Added new Note 8, citing 37 CFR § 2.99(c); Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42243 (August 1, 2007); and 37 CFR § 2.119(b). Also informs reader regarding utilizing fax and e-mail for meeting service obligations.
	Added new Note 9, citing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42244 (August 1, 2007).
	Added new Note 11, citing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42243 (August 1, 2007).
1106.05 Locating Excepted Users	Amended first paragraph to include information about notice of action by publication in Official Gazette.
	Amended second paragraph to include information about motions to delete reference to excepted users; and amended third paragraph to include information about motions to delete reference to registrant.
	Added new Note 2, citing 37 CFR § 2.118 and advising that time to respond to notice is typically thirty days.
	Added new Note 3, citing, by comparison, 37 CFR § 2.99(d)(1).
	Added new Note 4, citing 37 CFR § 2.118.
1107 Answer; Default	Amended first paragraph to reference situation where Board sends no scheduling order to excepted user.
	Added new second paragraph to inform reader of applicant’s service obligations and that copies of application may be viewed on Board’s website.
	Edited section throughout for clarity of writing; moved text on proof of entitlement by applicant to subsection 1108
	Added new Note 1, citing 37 CFR §§ 2.99(d)(1) and 2.119.
	Added parenthetical in Note 3 to: <i>Newsday, Inc. v. Paddock Publications, Inc.</i> , 223 USPQ 1305, 1307 (TTAB 1984).
1108 Issue in Concurrent Use Proceeding; Burden of Proof	Amended first paragraph to explain that rights of common law users are not before the Board; amended third paragraph to clarify that any

	grounds that may be asserted against an unrestricted application may be asserted as a basis for refusal in concurrent use proceeding.
	Added new fifth and sixth paragraphs to include information from (old) subsection 1107 regarding <i>ex parte</i> showing of entitlement.
	Added parenthetical in Note 1 to: <i>Fleming Companies v. Thriftway Inc.</i> , 21 USPQ2d 1451 (TTAB 1991), <i>aff'd</i> , 26 USPQ2d 1551 (S.D.Ohio 1992); and <i>Georgia-Southern Oil Inc. v. Richardson</i> , 16 USPQ2d 1723, 1725 n. 5 (TTAB 1990); added new case to Note 1: <i>The Pennsylvania Fashion Factory, Inc. v. Fashion Factory, Inc.</i> , 215 USPQ 1133, 1136 (TTAB 1982).
	Added new Note 2, citing 37 CFR § 2.99(e); <i>Gray v. Daffy Dan's Bargaintown</i> , 823 F.2d 522, 3 USPQ2d 1306, 1309 (Fed. Cir. 1987); <i>CDS Inc. v. I.C.E.D. Management Inc.</i> , 80 USPQ2d 1572, 1583-4 (TTAB 2006); <i>Terrific Promotions Inc. v. Vantex Inc.</i> , 36 USPQ2d 1349, 1352 (TTAB 1995); <i>Big M. Inc. v. United States Shoe Corp.</i> , 228 USPQ 614, 616 (TTAB 1985); <i>Ole' Taco Inc. v. Tacos Ole, Inc.</i> , 221 USPQ 912, 917 (TTAB 1984); <i>Handy Spot Inc. v. J. D. Williams Co.</i> , 181 USPQ 351, 352 (TTAB 1974); <i>Amalgamated Bank of New York v. Amalgamated Trust & Savings Bank</i> , 842 F.2d 1270, 6 USPQ2d 1305 (Fed. Cir. 1988); and <i>Pinocchio's Pizza Inc. v. Sandra Inc.</i> , 11 USPQ2d 1227, 1229 (TTAB 1989).
	Added new cases to Note 3: <i>Weiner King, Inc. v. Wiener King Corp.</i> , 615 F.2d 512, 204 USPQ 820, 832 (CCPA 1980); <i>CDS, Inc. v. I.C.E.D. Management, Inc.</i> , 80 USPQ2d 1572, 1581 (TTAB 2006); and <i>Pinocchio's Pizza Inc. v. Sandra Inc.</i> , 11 USPQ2d 1227, 1229 (TTAB 1989). Added parenthetical in Note 3 to: <i>Gray v. Daffy Dan's Bargaintown</i> , 823 F.2d 522, 3 USPQ2d 1306 (Fed. Cir. 1987)
	Deleted references from Note 3: <i>Inland Oil & Transport Co. v. IOT Corp.</i> , 197 USPQ 562 (TTAB 1977); <i>Handy Spot Inc. v. J. D. Williams Co.</i> , 181 USPQ 351 (TTAB 1974); and TBMP § 103.01(d)(2).
	Amended to insert new Notes 7, 8, and 9 from (old) subsection 1107.
1109 Conduct of	Amended first paragraph to delete reference to

Proceeding	TBMP § 1106, to indicate that parties may be subject to disclosure and conferencing obligations, that the issue in concurrent use proceedings is applicant's entitlement to registration; and that in certain cases, entitlement may be proven by less formal procedures.
	Added new second paragraph regarding the Board's ACR procedure.
	Amended third paragraph to include reference to "conferencing, disclosure" as part of schedule.
1109.01 (New) Sample Trial Schedules - Cases Commenced On or After November 1, 2007	Sets forth three sample trial schedules for cases commenced on or after November 1, 2007.
1109.02 (New) Sample Trial Schedules - Cases Commenced Before November 1, 2007	Sets forth two sample trial schedules for cases filed before November 1, 2007 (from (old) subsection 1109); adds new Note 1, citing Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242 (August 1, 2007).
1110 Settlement Providing for Concurrent Registration	Amended second paragraph to inform reader that parties will generally be afforded opportunity to submit revised settlement agreement. Added new second paragraph illustrating terms that may be included in settlement agreements. Added new third paragraph to indicate relevance of Internet advertising and listing measures to take to avoid confusion due to Internet advertising.
	Moved location of cases in Note 1: <i>In re Beatrice Foods Co.</i> , 166 USPQ 431, 437 (CCPA 1970); <i>Fleming Companies Inc. v. Thriftway Inc.</i> , 21 USPQ2d 1451, 1454 (TTAB 1991), <i>aff'd</i> , 26 USPQ2d 1551 (S.D.Ohio 1992); <i>Precision Tune Inc. v. Precision Auto-Tune Inc.</i> , 4 USPQ2d 1095, 1096 (TTAB 1987); and <i>The Pennsylvania Fashion Factory, Inc. v. Fashion Factory, Inc.</i> , 215 USPQ 1133, 1136 (TTAB 1982).
1110 Settlement Providing for Concurrent Registration	Added new Note 2, citing <i>Amalgamated Bank of New York v. Amalgamated Trust & Savings Bank</i> , 6 USPQ2d 1305 (Fed. Cir. 1988); <i>In re Beatrice Foods Co.</i> ; <i>In re Fairway Foods, Inc.</i> , 166 USPQ 431, 437 (C.C.P.A. 1970); <i>Precision Tune Inc. v. Precision Auto-Tune Inc.</i> , 4 USPQ2d 1095 (TTAB 1987); <i>The Pennsylvania Fashion Factory, Inc. v. Fashion Factory, Inc.</i> , 215 USPQ 1133 (TTAB 1982); and, by comparison, <i>Newsday, Inc. v. Paddock Publications, Inc.</i> , 223 USPQ 1305 (TTAB

	1984).
	Added new Note 3, citing <i>CDS Inc. v. I.C.E.D. Management Inc.</i> , 80 USPQ2d 1572, 1583-4 (TTAB 2006).
	Added new case to Note 4: <i>Fleming Companies v. Thriftway Inc.</i> , 21 USPQ2d 1451, 1456 (TTAB 1991), <i>aff'd</i> , 26 USPQ2d 1551 (S.D. Ohio 1992).
1111 Effect of Abandonment of Involved Application	Amended to include information from TBMP § 603; deleting mere reference to that section.
	Added new Note 1, citing: <i>Cf. Fleming Companies Inc. v. Thriftway Inc.</i> , 21 USPQ2d 1451, 1453 (TTAB 1991), <i>aff'd</i> , 26 USPQ2d 1551 (S.D. Ohio 1992); <i>Newsday, Inc. v. Paddock Publications, Inc.</i> , 223 USPQ 1305, 1307-8 (TTAB 1984).
1112 Effect of Adverse Decision in Opposition or Cancellation	Edited for clarity of writing; added new case to Note 1: <i>Rosso and Mastracco, Inc. v. Giant Food Inc.</i> , 720 F.2d 1263, 219 USPQ 1050, 1053 (Fed. Cir. 1983); changed signal reference from <i>see</i> to <i>cf.</i> before: <i>U.S. Soil, Inc. v. Colovic</i> , 214 USPQ 471 (TTAB 1982).
1113 "Conversion" of Opposition or Cancellation Proceeding to Concurrent Use Proceeding	Section Heading only
1113.01 Conversion of Opposition Proceeding	Amended first paragraph to inform reader that parties change positions when opposition "converted" to concurrent use proceeding; amended to clarify that Board may add opposer as excepted user in concurrent use proceeding and dismiss opposition in single order, where opposer does not file its own concurrent use application.
	Amended fifth paragraph to add advisory comment regarding modifications to procedures since publication of articles.
1113.02 Conversion of Cancellation Proceeding	Amended to add reference to TBMP § 1112.
1114 Alteration of Restrictions on Concurrent Registrations	Edited for clarity of writing; amended to add reference to TBMP § 1104 in fourth paragraph.
	Added parentheticals in Note 2 to citations of: <i>Morgan Services Inc. v. Morgan Linen Services Inc.</i> , 12 USPQ2d 1841, 1843 (TTAB 1989); <i>In re Alfred Dunhill Ltd.</i> , 4 USPQ2d 1383, 1384 (Comm'r 1987); and <i>In re Forbo</i> , 4 USPQ2d 1415, 1416 (Comm'r 1984).

	Added parenthetical in Note 3 to <i>In re Alfred Dunhill Ltd.</i> , 4 USPQ2d 1383, 1384 (Comm'r 1987).
	Added new Note 5, citing: <i>Fleming Companies Inc. v. Thriftway Inc.</i> , 21 USPQ2d 1451, 1453 (TTAB 1991), <i>aff'd</i> , 26 USPQ2d 1551 (S.D.Ohio 1992); and <i>Newsday, Inc. v. Paddock Publications, Inc.</i> , 223 USPQ 1305, 1307-8 (TTAB 1984).

**INDEX TO CHANGES IN THIRD EDITION
CHAPTER 1200**

TBMP SECTION

NATURE OF CHANGE

1201.01 Readiness of Case for Appeal	Amended reference to 37 CFR § 2.141.
	Amended citation in Note 3 from TMEP § 713 to § 714.
	Added new case to Notes 4 and 6: <i>In re Roberts</i> , 87 USPQ2d 1474, 1478 (TTAB 2008).
1201.02 Premature Final	Added clarification that new rationale is not a new refusal or requirement; added that if applicant files a notice of appeal but believes the final refusal is premature, applicant should advise the Board; added that if premature appeal filed and instituted, Board will vacate the institution order.
	Added <i>In re Dietrich</i> , 91 USPQ2d 1622, 1624 (TTAB 2009) to Note 3.
	Added new Note 4, citing: <i>See In re Eagle Crest Inc.</i> , 96 USPQ2d 1227, 1229 (TTAB 2010); <i>In re Paper Doll Promotions Inc.</i> , 84 USPQ2d 1660, 1665 (TTAB 2007).
1201.04 Compliance with Requirements Not Subject of Appeal	Deleted reference to an alternative approach suggested in a 1980 decision, which was superseded by amendment to 37 CFR § 2.142(c).
1201.05 Appeal Versus Petition	Clarified that Board will consider only correctness of substantive refusals, and not whether the procedural issue of whether issuance of or failure to issue substantive refusal is clear error.
	Deleted <i>In re Sambado & Son, Inc.</i> , 45 USPQ2d 1312 (TTAB 1997) from Note 4.
	Added <i>In re Dermahose Inc.</i> , 82 USPQ2d 1793, 1796 n.5 (TTAB 2007) to Note 12.
	Added new Note 13, citing: <i>In re Jump Designs LLC</i> , 80 USPQ2d 1370, 1373-74 (TTAB 2006); <i>In re Sambado & Son Inc.</i> , 45 USPQ2d 1312, 1314 (TTAB 1997).
1202.01 In General	Clarifies that if a refusal does not pertain to all of the goods or services in a class, the application can be divided to sever those goods or services; clarifies that if there is a multiple class application, and applicant does not wish to appeal the refusal for all classes, it should indicate in the notice of appeal the classes for which it is appealing.

	Added new Note 4, citing: <i>In re MGA Entertainment Inc.</i> , 84 USPQ2d 1743, 1745 n.1 (TTAB 2007).
1202.02 Time for Appeal	Points out that unintentional delay standard for petition to revive procedure is not applicable if applicant files a request for reconsideration but fails to file a notice of appeal; notes that notice of appeal is the only paper that can be filed with the Board by facsimile transmission; cites sections of TMEP regarding notice of appeal, requests for reconsideration and situations where unintentional delay standard does not apply.
1202.03 Notice of Appeal	Explains ESTTA procedure for filing notice of appeal, including if request for reconsideration or other paper filed with notice of appeal; states that electronic signature will be accepted; explains Board policy on accepting signatures for notice of appeal, and how it differs from TMEO policy for application papers; explains procedure if applicant believes final refusal is premature; deletes suggested format for paper copy of notice of appeal.
1202.04 Appeal Fee	Adds that deposit account must contain sufficient funds for general authorization to charge account to be accepted.
	Deleted reference to 37 CFR § 2.85(e) and amended reference to 37 CFR § 2.141.
	In Note 4, deleted reference to <i>In re Sky is the Ltd.</i> , 42 USPQ2d 1799 (Comm'r 1996) and added reference to 37 CFR § 2.208(b).
1202.05 Multiple Class Applications	Adds that for multiple class application, if appeal is filed for fewer than all classes, applicant should indicate the classes to which the appeal applies, and that if refusal applies to fewer than all goods or services in a class, applicant may request to divide the class into two applications so that the goods or services for which there is no refusal may proceed to publication or registration.
1203.01 Form of Brief	Adds that appendices or exhibits to brief may not be used to avoid page limitation; clarifies that if table of contents and description of record are included in brief, they count toward the page limitation; suggests that applicant and examining attorney should highlight in briefs the most probative evidence if a great deal of evidence is in the record; notes rule change that briefs are

	not accepted on CD-ROM.
	Added new Note 1, citing: <i>In re Psygnosis Ltd.</i> , 51 USPQ2d 1594, 1596 (TTAB 1999) and <i>Harjo v. Pro-Football Inc.</i> , 45 USPQ2d 1789, 1792 (TTAB 1998).
	Added new Note 2, citing: <i>In re SL&E Training Stable Inc.</i> , 88 USPQ2d 1216, 1220 n.9 (TTAB 2008).
	Added new Note 4, citing: <i>See In re Thomas</i> , 79 USPQ2d 1021 (TTAB 2006).
	Added new Note 10, citing: <i>In re HerbalScience Group LLC</i> , 96 USPQ2d 1321, 1323 (TTAB 2010)
1203.02(a) Applicant's Main Brief	Adds what applicant is to do if filing appeal through ESTTA and also filing request for reconsideration; changes method of notification of approval of application by examining attorney from mail to email.
1203.02(b) Trademark Examining Attorney's Brief	Clarifies that examining attorney's failure to file brief does not result in approval of application; if examining attorney is persuaded by applicant's appeal brief, add that notification of approval of application may be made by email; clarifies that if an examining attorney adds or changes argument or rationale for refusal that is not a new issue for which remand is required.
	Adds cross-reference to TBMP § 1209.02 clarifying that it is general practice of Board to grant examining attorneys' requests for remand to make new refusal or requirement.
	Adds references to 37 CFR § 2.142(f)(6) and by analogy, <i>In re Dietrich</i> , 91 USPQ2d 1622, 1624 (TTAB 2009) in Note 6.
	Added new Note 7, citing <i>In re Paper Doll Promotions Inc.</i> , 84 USPQ2d 1660, 1665 (TTAB 2007).
1203.02(c) Applicant's Reply Brief	Deletes requirement that examining attorney notify Board if applicant's reply brief persuades examining attorney to approve the application.
1203.02(d) Extension of Time for Filing Brief	No change.
1203.02(e) Material Submitted with Briefs	Adds that it is not necessary to attach as exhibits to appeal brief papers or evidence that is already in the file.
	Added new cases to Note 2: <i>In re Brouwerij Bosteels</i> , 96 USPQ2d 1414 (TTAB 2010)

	<p>(exhibits attached to applicant's supplemental reply brief not considered); <i>In re HerbalScience Group LLC</i>, 96 USPQ2d 1321, 1322 (TTAB 2010); <i>In re Quantum Foods Inc.</i>, 94 USPQ2d 1375, 1377 n.2 (TTAB 2010) (page from applicant's website submitted with appeal brief not considered); <i>In re Binion</i>, 93 USPQ2d 1531 (TTAB 2009) (third-party registrations and excerpt from registrant's website submitted with supplemental appeal brief not considered); <i>In re Petroglyph Games, Inc.</i>, 91 USPQ2d 1332, 1334 (TTAB 2009) (submissions with reply brief not considered); <i>In re MC MC S.r.l.</i>, 88 USPQ2d 1378, 1379 n.3 (TTAB 2008) (previously unsubmitted materials attached to applicant's brief not considered); <i>In re Tea and Sympathy Inc.</i>, 88 USPQ2d 1062, 1063, n.2 (TTAB 2008) (exhibits submitted for first time with applicant's appeal brief and declaration attached to reply brief not considered); <i>In re Fiesta Palms LLC</i>, 85 USPQ2d 1360, 1363 n.5 (TTAB 2007) (entry from online encyclopedia submitted for first time with reply brief untimely and not of record); <i>In re Genitope Corp.</i>, 78 USPQ2d 1819, n.3 (TTAB 2006) (materials from applicant's website submitted for first time with examining attorney's brief not considered); <i>In re King Koil Licensing Co.</i>, 79 USPQ2d 1048, 1050 (TTAB 2006) (declaration by applicant's president submitted for first time with applicant's appeal brief not considered); <i>In re Promo Ink</i>, 78 USPQ 1301, 1303-04 (TTAB 2006).</p>
1203.02(f) Cases Which May Be Cited	Sets out Board policy on citation of "not precedential" decisions; adds that case citations should include citation to <i>United States Patent Quarterly</i> if case appears in that publication.
	Added new case to Note 1: <i>General Mills Inc. v. Health Valley Foods</i> , 24 USPQ2d 1270 (TTAB 1992).
	Added new Note 2, citing <i>Citation of Opinions to the Trademark Trial and Appeal Board</i> , O.G. Notice (Jan. 23, 2007) and new Note 3, citing <i>In re Carlson</i> , 91 USPQ2d 1198 (TTAB 2009).
1203.02(g) Waiver of Claim or Requirement in Brief	Added references to TBMP §§ 1203.02(b) and 1205.
1204 Effect of Request for	Adds reference to how to indicate a request for

Reconsideration of Final Action	reconsideration is filed when appeal is filed through ESTTA in text and in new Note 10; deletes references to paper application files; clarifies that a request for reconsideration filed after the filing of appeal, even if filed within 6 months of final refusal, is treated as a request for remand, if examining attorney had previously acted on request for reconsideration after filing of appeal; deletes citation to 1984 <i>Trademark Reporter</i> article and updates TMEP references.
	Added new case to Note 1: <i>In re Petroglyph Games, Inc.</i> , 91 USPQ2d 1332 (TTAB 2009).
	Added new Note 6, explaining procedure if applicant files an appeal brief when its request for reconsideration is pending and citation to <i>In re Husqvarna Aktiebolag</i> , 91 USPQ2d 1436 (TTAB 2009).
	Added new Notes 15 and 16, citing <i>In re HerbalScience Group LLC</i> , 96 USPQ2d 1321, 1323 (TTAB 2010); <i>In re Davey Products Pty Ltd.</i> , 92 USPQ2d 1198 (TTAB 2009).
1205.01 In General	Adds reference of how to indicate an amendment is filed when appeal is filed through ESTTA; deletes references to paper application files; clarifies that examining attorney may submit evidence with respect to issues relevant to amendment; clarifies that an amendment filed after the filing of appeal, even if filed within 6 months of final refusal, is treated as a request for remand, if examining attorney had previously acted on request for reconsideration or amendment after filing of appeal; clarifies that a showing of good cause for remanding application to consider amendment will depend on the stage of the appeal and reasons given for the delay; adds example of situation in which Board will grant limited remand; clarifies what examining attorney should do if amendment is contained in applicant's brief instead of a separate request for remand; updates references to TMEP.
	Added new Note 4, citing <i>In re Big Pig Inc.</i> , 81 USPQ2d 1436 (TTAB 2006).
	Added new Note 5, citing <i>In re HerbalScience Group LLC</i> , 96 USPQ2d 1321 (TTAB 2010).
1205.02 Request to Divide	Amended to clarify procedures on request to divide.

1205.02(a) Request to Divide When Notice of Appeal is Submitted Electronically (New)	This new subsection explains procedures when request to divide is filed with notice of appeal filed via ESTTA.
1205.02(b) Request to Divide When Notice of Appeal is Submitted on Paper (New)	This new subsection explains procedures when request to divide is filed with notice of appeal filed on paper.
1206.01 Amendment to Allege Use	Deletes references to paper application files; adds reference to how to indicate an AAU is filed when appeal is filed through ESTTA; clarifies that examining attorney may issue new refusal based on information in AAU.
1206.02 Statement of Use	No changes made.
1207.01 General Rule – Evidence Submitted After Appeal Untimely	Clarifies that applicant may submit entire articles with brief if portions of the articles were submitted by examining attorney during examination.
	Added new Note 4, citing <i>In re Max Capital Group Ltd.</i> , 93 USPQ2d 1243 (TTAB 2010).
1207.02 Request to Remand for Additional Evidence	Clarifies that the Board may direct that evidence submitted in response to evidence submitted with a request for remand be submitted with a supplemental appeal brief; deletes citations to 1983 and 1984 <i>Trademark Reporter</i> articles.
	Added new case to Note 4: <i>In re Petroglyph Games, Inc.</i> , 91 USPQ2d 1332 (TTAB 2009).
	Added new Note 8, citing <i>In re HerbalScience Group LLC</i> , 96 USPQ2d 1321 (TTAB 2010).
1207.03 Evidence Considered Due to Actions of Nonoffering Party	Clarifies that copies of third-party registrations submitted with a reply brief will be considered if the examining attorney did not object to a listing of registrations at a point that the insufficiency could be cured.
	Adds new cases to Note 1: <i>In re Heeb Media LLC</i> , 89 USPQ2d 1071, 1072 (TTAB 2008); <i>In re Litehouse Inc.</i> , 82 USPQ2d 1471, 1475, n.2 (TTAB 2007); <i>In re Homeland Vinyl Products Inc.</i> , 81 USPQ2d 1378, 1381 n.5 (TTAB 2006); <i>In re Rodale Inc.</i> , 80 USPQ2d 1696, 1699 n.4 (TTAB 2006); <i>In re Jump Designs LLC</i> , 80 USPQ2d 1370, 1372 (TTAB 2006).
	Adds new cases to Note 3: <i>In re 1st USA Realty Professionals Inc.</i> , 84 USPQ2d 1581, 1583 (TTAB 2007); <i>In re Hayes</i> , 62 USPQ2d 1443, 1445 n.3 (TTAB 2002).
1207.04 Evidence Filed With	Clarifies that if the examining attorney denies a

Timely Request for Reconsideration	request for reconsideration after an appeal is filed, a second request for reconsideration will be treated as a request for remand even if filed within six months of a final Office action; adds cross-references to TBMP sections.
	Added new Note 1, citing <i>Petroglyph Games, Inc.</i> , 91 USPQ2d 1332 (TTAB 2009).
	Added new Note 2, citing <i>In re Davey Products Pty Ltd.</i> , 92 USPQ2d 1198 (TTAB 2009).
	Added case to Note 3: <i>In re HerbalScience Group LLC</i> , 96 USPQ2d 1321 (TTAB 2010).
1207.05 Submission of Evidence upon Remand for New Refusal	No changes made.
1207.06 Letter of Protest Evidence	Reflects that Office of the Deputy Commissioner for Trademark Examining Policy determines letters of protest.
	Adds new Note 1, citing <i>In re Candy Bouquet International Inc.</i> , 73 USPQ2d 1883 (TTAB 2004); TMEP § 1715 <i>et seq.</i>
1208 Treatment of Evidence	Deletes citation to 1983 <i>Trademark Reporter</i> article; adds case to Note 5: <i>In re First Craft Inc.</i> , 76 USPQ2d 1183 (TTAB 2005).
	Adds cases to Note 6: <i>In re Hotels.com, L.P.</i> , 573 F.3d 1300, 91 USPQ2d 1532 (Fed. Cir. 2009); <i>In re Udor U.S.A. Inc.</i> , 89 USPQ2d 1978, 1984 (TTAB 2009); <i>In re Pharmavite LLC</i> , 91 USPQ2d 1778 (TTAB 2009).
1208.01 Evidence from Nexis Database or Publications	Clarifies that probative value of newswire stories varies, and that probative value of articles from foreign publications is evaluated on case-by-case basis; clarifies that samples of articles submitted by examining attorney should be representative of the articles retrieved, and that if a limited number of articles is submitted without an indication that they are representative, they will be deemed to be the only articles that support the examining attorney's position.
	Adds new case to Note 2: <i>In re Viventia Biotech Inc.</i> , 80 USPQ2d 1376, 1379 (TTAB 2006).
	Adds new cases to Note 3: <i>In re International Business Machines Corp.</i> , 81 USPQ2d 1677 (TTAB 2006); <i>In re Classic Media Inc.</i> , 78 USPQ2d 1699 (TTAB 2006).
	Added new Note 4, citing <i>In re Toshiba Medical Systems Corp.</i> , 91 USPQ2d 1266 (TTAB 2009);

	<i>In re Cell Therapeutics Inc.</i> , 67 USPQ2d 1795 (TTAB 2003).
	Added new case to Note 7: <i>In re Petroglyph Games, Inc.</i> , 91 USPQ2d 1332 (TTAB 2009).
	Added new case to Note 8: <i>In re Homes & Land Publishing Corp.</i> , 24 USPQ2d 1717 (TTAB 1992).
	Added new Note 9, citing <i>In re The Monotype Corp. PLC</i> , 14 USPQ2d 1070 (TTAB 1989) and <i>In re Federated Department Stores Inc.</i> , 3 USPQ2d 1541 (TTAB 1987).
1208.02 Third Party Registrations	Explains Board policy with regard to judicial notice of third party registrations; clarifies that copies of third-party registrations submitted with applicant's appeal brief or reply brief will be considered if the examining attorney did not object to a listing of registrations at a point that the insufficiency could be cured; clarifies that expired or cancelled registrations are evidence only of the fact that the registrations issued.
	Added new Note 1, citing <i>In re Chippendales USA, Inc.</i> , 622 F.3d 1346, 96 USPQ2d 1681 (Fed. Cir. 2010).
	Added new case to Note 2: <i>In re Jump Designs LLC</i> , 80 USPQ2d 1370 (TTAB 2006).
	Added new case to Note 4: <i>In re 1st USA Realty Professionals Inc.</i> , 84 USPQ2d 1581, 1583 (TTAB 2007).
	Added new Note 6, citing <i>In re 1st USA Realty Professionals Inc.</i> , 84 USPQ2d 1581 (TTAB 2007); <i>In re Broyhill Furniture Industries Inc.</i> , 60 USPQ2d 1511 (TTAB 2001).
	Added new Note 7, citing <i>In re Eagle Crest Inc.</i> , 96 USPQ2d 1227 (TTAB 2010); <i>In re Red Bull GmbH</i> , 78 USPQ2d 1375 (TTAB 2006).
	Added new case to Note 8: <i>In re 1st USA Realty Professionals Inc.</i> , 84 USPQ2d 1581 (TTAB 2007).
	Added new cases to Note 9: <i>In re Toshiba Medical Systems Corporation</i> , 91 USPQ2d 1266, 1270 n.8 (TTAB 2009); <i>In re Fiesta Palms LLC</i> , 85 USPQ2d 1360, 1366 n.7 (TTAB 2007); <i>In re 1st USA Realty Professionals Inc.</i> , 84 USPQ2d 1581, 1583 (TTAB 2007); <i>In re Phillips-Van Heusen Corp.</i> , 63 USPQ2d 1047, 1049 n.4 (TTAB 2002).
	Added new Note 10, citing <i>In re Binion</i> , 93

	USPQ2d 1531, 1535 n.3 (TTAB 2009).
	Added new Note 11, citing <i>In re Brown-Forman Corp.</i> , 81 USPQ 1284, 1286 n.3 (TTAB 2006).
1208.03 Internet Material	Adds that URL should be used in identifying website evidence, that Internet evidence can be used to show translation of a term; clarifies that evidence from foreign website may have probative value, depending on circumstances; adds that search summary from search engine may have insufficient text to show context for term; that the fact that search engine search retrieves large number of hits doesn't have probative value; that applicant and examining attorney should submit only relevant materials retrieved by Internet search, and Board discourages submissions that are redundant or not probative; that if a large number of web pages are submitted, applicant and examining attorney should highlight in their briefs the most probative evidence; that Board will not take judicial notice of internet searches; that definitions from online resources that are readily available are acceptable; Board's policy on taking judicial notice of online dictionary definitions; and Board's policy on considering Wikipedia evidence.
	Added new Note 1, citing <i>In re White</i> , 73 USPQ2d 1713, 1716, n.5 (TTAB 2004); <i>In re International Business Machines Corp.</i> , 81 USPQ2d 1677, 1682 n.9 (TTAB 2006).
	Added new Note 3, citing <i>In re La Peregrina Ltd.</i> , 86 USPQ2d 1645, 1647 n.3 (TTAB 2008); <i>In re Brown-Forman Corp.</i> , 81 USPQ 1284, 1286 (TTAB 2006).
	Added new Note 4, citing <i>In re International Business Machines Corp.</i> , 81 USPQ2d 1677, 1681 n.7 (TTAB 2006); <i>In re King Koil Licensing Co.</i> , 79 USPQ2d 1048, 1050 (TTAB 2006); <i>In re Remacle</i> , 66 USPQ2d 1222, 1224, n.5 (TTAB 2002).
	Added new Note 5, citing <i>In re Bayer Aktiengesellschaft</i> , 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007); <i>In re Innovative Companies LLC</i> , 88 USPQ2d 1095, 1099, n.4 (TTAB 2008); <i>In re Tea and Sympathy Inc.</i> , 88 USPQ2d 1062, 1064, n.3 (TTAB 2008); <i>In re King Koil Licensing Co.</i> , 79 USPQ2d 1048, 1050

	(TTAB 2006); <i>In re Thomas</i> , 79 USPQ2d 1021, 1026 (TTAB 2006); <i>In re International Business Machines Corp.</i> , 81 USPQ2d 1677, 1679 n.3 (TTAB 2006); <i>In re Remacle</i> , 66 USPQ2d 1222, 1223, n.2 (TTAB 2002); <i>In re Hotels.com L.P.</i> , 87 USPQ2d 1100, 1105 n.7 (TTAB 2008), <i>aff'd</i> , 573 F.3d 1300, 91 USPQ2d 1532 (Fed. Cir. 2009).
	Added new Note 7, citing <i>In re BetaBatt Inc.</i> , 89 USPQ2d 1152, 1153, n.1 (TTAB 2008).
	Added new Note 8, citing <i>In re Max Capital Group Ltd.</i> , 93 USPQ2d 1243, 1246 (TTAB 2010).
	Added new Note 9, citing <i>In re Max Capital Group Ltd.</i> , 93 USPQ2d 1243, 1246 (TTAB 2010).
	Added new Note 10, citing <i>In re Viventia Biotech Inc.</i> , 80 USPQ2d 1376, 1377 (TTAB 2006).
	Added new Note 11, citing <i>In re Bayer Aktiengesellschaft</i> , 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007); <i>In re Tires, Tires, Tires, Inc.</i> , 94 USPQ2d 1153 (TTAB 2009).
	Added new cases to Note 12: <i>In re Davey Products Pty Ltd.</i> , 92 USPQ2d 1198 (TTAB 2009); <i>In re Carlson</i> , 91 USPQ2d 1198, 1199, n.2 (TTAB 2009).
	Added new Note 13, citing <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581 (TTAB 2008); <i>In re Red Bull GmbH</i> , 78 USPQ2d 1375, 1378 (TTAB 2006).
	Added new Note 14, citing <i>In re Carrier Consulting Group</i> , 84 USPQ2d 1028, 1032-33 (TTAB 2007); <i>In re Thor Tech, Inc.</i> , 90 USPQ2d 1634, 1636 n.4, 6, 7 (TTAB 2009); <i>In re Grand Forest Holdings Inc.</i> , 78 USPQ2d 1152, 1153, 1154 n.3 (TTAB 2006).
1208.04 Judicial Notice	Clarifies the types of dictionaries containing definitions that Board will take judicial notice of; that Board will consider definitions from on-line dictionaries if made of record during examination; and that Board will not take judicial notice if source of definition is not clear.
	Added new cases to Note 1: <i>In re Osmotica Holdings Corp.</i> , 95 USPQ2d 1666, 1668 (TTAB 2010); <i>In re Petroglyph Games, Inc.</i> , 91 USPQ2d 1332, 1338 (TTAB 2009); <i>In re Hotels.com, L.P.</i> , 87 USPQ2d 1100, 1103 (TTAB 2007), <i>aff'd</i> , 573 F.3d 1300, 91 USPQ2d 1532 (Fed. Cir. 2009); <i>In re La Peregrina Ltd.</i> , 86 USPQ2d 1645, 1647 n.3

	(TTAB 2008); <i>In re Brown-Forman Corp.</i> , 81 USPQ2d 1284, 1285 n.2 (TTAB 2006); <i>In re Box Solutions Corp.</i> , 79 USPQ2d 1953, 1957 (TTAB 2006); <i>In re Reed Elsevier Properties Inc.</i> , 77 USPQ2d 1649, 1653 n.8 (TTAB 2005), <i>aff'd</i> , 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007); <i>In re Isabella Fiore LLC</i> , 75 USPQ2d 1564, 1568 n.7 (TTAB 2005).
	Added new cases to Note 3: <i>In re Petroglyph Games, Inc.</i> , 91 USPQ2d 1332, 1338 (TTAB 2009); <i>In re Tokutake Industry Co.</i> , 87 USPQ2d 1697, 1700, n.1 (TTAB 2008); <i>In re Yeley</i> , 85 USPQ2d 1150, 1153, n.10, n.11 (TTAB 2007); <i>In re Thermo LabSystems Inc.</i> , 85 USPQ2d 1285, 1291 (TTAB 2007); <i>In re Joint-Stock Co. "Baik"</i> , 84 USPQ2d 1921, 1923 n.2 (TTAB 2007); <i>In re Brown-Forman Corp.</i> , 81 USPQ2d 1284, 1286 (TTAB 2006); <i>In re Isabella Fiore LLC</i> , 75 USPQ2d 1564, 1566 n.5 (TTAB 2005); <i>In re Eddie Z's Blinds and Drapery Inc.</i> , 74 USPQ2d 1037, 1038 n.3 (TTAB 2005); <i>In re Brown-Forman Corp.</i> , 81 USPQ2d 1284, 1286 (TTAB 2006); <i>In re Viventia Biotech Inc.</i> , 80 USPQ2d 1376, 1377 (TTAB 2006); <i>In re Red Bull GmbH</i> , 78 USPQ2d 1375, 1379 n.7 (TTAB 2006).
	Added new case to Note 4: <i>In re Fiesta Palms LLC</i> , 85 USPQ2d 1360, 1363 n.5 (TTAB 2007).
	Added new Note 5, citing <i>In re Dietrich</i> , 91 USPQ2d 1622, 1631 n.15 (TTAB 2009); <i>In re Petroglyph Games Inc.</i> , 91 USPQ2d 1332, 1334 n.1 (TTAB 2009); <i>In re Red Bull GmbH</i> , 78 USPQ2d 1375, 1378 (TTAB 2006); <i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581 (TTAB 2008).
	Added new Note 6, citing <i>In re Gregory</i> , 70 USPQ2d 1792, 1793 (TTAB 2004).
1208.05 Applicant's Own Materials	Subsection added to clarify that applicant's own materials will be considered even if application based on intent-to-use.
	Added new Note 1, citing <i>In re Hunter Fan Co.</i> , 78 USPQ2d 1474, 1476, n.2 (TTAB 2006); <i>In re Promo Ink</i> , 78 USPQ2d 1301, 1303 (TTAB 2006).
1209.01 Remand – Upon Board's Own Initiative	Includes references to requirements as well as refusals; adds new case to Note 2: <i>In re Consolidated Specialty Restaurants Inc.</i> , 71

	USPQ2d 1921, 1922 (TTAB 2004) and to Note 15: <i>In re W.W. Henry Co.</i> , 82 USPQ2d 1213, 1213 (TTAB 2007).
1209.02 Remand – Upon Request by Trademark Examining Attorney	Includes references to requirements as well as refusals; deletes citation of three 1986 cases that were decided prior to adoption of 37 C.F.R. § 2.142(f)(6).
1209.03 Remand – Upon Granted Letter of Protest	Changes name of office that decides Letters of Protest, and title of person who makes that determination.
1209.04 Remand – Upon Request by Applicant	Clarifies that if examining attorney denies a request for reconsideration after appeal is filed, a second request for reconsideration is treated as a request for remand even if filed within 6 months of final Office action.
1210 Approval for Publication During Appeal	Adds that examining attorney may notify application by email that application has been approved.
1211 Abandonment During Appeal	No changes made.
1212 Cancellation or Assignment of Cited Registration	No changes made.
1213 Suspension of Appeal	Deletes references to registrations that issued prior to November 16, 1989 and have not yet been renewed; adds that if examining attorney approves application the applicant should be notified by telephone or email; adds that if the appropriate affidavit or renewal application is accepted for the cited registration the examining attorney should notify the Board, which will then resume proceedings in the appeal.
1214 Consolidation	Adds new cases to Note 1: <i>In re America Online Inc.</i> , 77 USPQ2d 1618 (TTAB 2006) and deletes citations to older cases.
	Adds new cases to Note 2: <i>In re Binion</i> , 93 USPQ2d 1531, 1533 (TTAB 2009); <i>In re Vertex Group LLC</i> , 89 USPQ2d 1694, 1695 (TTAB 2009); <i>In re Supply Guys Inc.</i> , 86 USPQ2d 1488, 1490 (TTAB 2008).
1215 Alternative Positions	Clarifies that applicant should state that its claim is “in the alternative;” adds references to TMEP in new Notes 4 and 5.
	Adds new cases to Note 1: <i>In re Brouwerij Bosteels</i> , 96 USPQ2d 1414 (TTAB 2010); <i>In re E S Robbins Corp.</i> , 30 USPQ2d 1540 (TTAB 1992);

	<i>In re Binion</i> , 93 USPQ2d 1531 (TTAB 2009); <i>In re Reed Elsevier Properties Inc.</i> , 77 USPQ2d 1649, 1652 (TTAB 2005), <i>aff'd</i> , 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007); <i>In re DNI Holdings Ltd.</i> , 77 USPQ2d 1435, 1436 (TTAB 2005).
	Adds new cases to Note 2: <i>In re Brouwerij Bosteels</i> , 96 USPQ2d 1414, n.7 (TTAB 2010); <i>In re Binion</i> , 93 USPQ2d 1531 (TTAB 2009).
	Added new Note 3, citing <i>In re Chippendales USA, Inc.</i> , 622 F.3d 1346, 96 USPQ2d 1681, n.8 (Fed. Cir. 2010).
1216 Oral Hearing	Adds that when applicant requests an oral hearing the Board contacts the applicant with possible dates; that hearings are generally held between 10:00 and 3:00; that an applicant may request that it attend by video conference, and provides details of what is required; clarifies that contact information appears on the scheduling order, and that documents offered at the hearing not previously made of record will not be considered unless consented to by non-offering party, in which case they will be deemed stipulated into the record; deletes references to videoconferencing facilities only in California and Michigan.
1217 Final Decision	Clarifies that although the Board normally considers all refusals and requirements, if Board affirms a refusal or requirement it may elect not to reach any further refusals or requirements; clarifies that in a multi-class application the Board may affirm a refusal as to one class and reverse the refusal with respect to another; clarifies that even if the Board reverses a refusal for an intent-to-use application, the examining attorney may still issue a new refusal or requirement arising from examination of the statement of use.
	Added new Note 3, citing <i>In re Tires, Tires, Tires, Inc.</i> , 94 USPQ2d 1153, 1157 (TTAB 2009); <i>In re Udor U.S.A. Inc.</i> , 89 USPQ2d 1978, 1984 (TTAB 2009); <i>In re Carlson</i> , 91 USPQ2d 1198, 1203 (TTAB 2009); <i>In re Cheezwhse.com Inc.</i> , 85 USPQ2d 1917 (TTAB 2008); <i>In re MGA Entertainment Inc.</i> , 84 USPQ2d 1743, 1747 (TTAB 2007); <i>In re Howard Leight Industries LLC</i> , 80 USPQ2d 1507 (TTAB 2006).

	Added new Note 4, citing <i>In re Max Capital Group Ltd.</i> , 93 USPQ2d 1243 (TTAB 2010); <i>In re Davey Products Pty Ltd.</i> , 92 USPQ2d 1198 (TTAB 2009); <i>In re DTI Partnership LLP</i> , 67 USPQ2d 1699, 1072 (TTAB 2003).
	Added new Note 5, citing <i>In re Wielinski</i> , 49 USPQ2d 1754 (TTAB 1998); <i>In re Harry N. Abrams, Inc.</i> , 223 USPQ 832 (TTAB 1984).
	Added new case to Note 11: <i>In re W.W. Henry Co.</i> , 82 USPQ2d 1213, 1213 (TTAB 2007).
	Added new Note 12, citing TMEP § 1109.07 <i>et seq.</i> ; <i>In re Husqvarna Aktiebolag</i> , 91 USPQ2d 1436, 1439 (TTAB 2009).
1218 Reopening	Added new cases to Note 2: <i>In re Brown-Forman Corp.</i> , 81 USPQ2d 1284, 1288 (TTAB 2006); <i>In re Box Solutions Corp.</i> , 79 USPQ2d 1953, 1958 (TTAB 2006); <i>In re Crystal Geyser Water Co.</i> , 85 USPQ2d 1374, 1379 (TTAB 2007).
	Added new case to Note 4: <i>In re Spirits International N.V.</i> , 563 F.3d 1347, 90 USPQ2d 1489 (Fed. Cir. 2009).
1219.01 Review of Final Decision—By Request for Reconsideration	Adds new case to Note 2: <i>In re Squaw Valley Development Co.</i> , 80 USPQ2d 1264, 1266 (TTAB 2006) and TMEP reference.